Supreme Court, U.S.
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No. 06-517

In The
Supreme Court of the United States

U.S. BANK NATIONAL ASSOCIATION,
as Indenture Trustee,

Petitioner,

v.

JPMORGAN CHASE BANK, as Trustee;
JEFFERSON-PILOT LIFE INSURANCE COMPANY;
JEFFERSON-PILOT FINANCIAL INSURANCE
COMPANY; TYNDALL PARTNERS, LP; and
TYNDALL INSTITUTIONAL PARTNERS, LP,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 502(b) of the Bankruptcy Code provides that, if an objection is made to a claim in bankruptcy, the court "shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount. . . ." May courts selectively apply § 502(b) to discount some future payment obligations but not others to present value?

RULE 14.1(b) AND RULE 29.6 STATEMENT

U.S. Bank National Association is a national banking association. Its parent company is U.S. Bancorp. No publicly held company has any ownership interest in U.S. Bank National Association.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The majority and dissenting opinions of the court of appeals (App., at 1-57) are reported at 449 F.3d 588. The order denying the petition for rehearing and suggestion for rehearing *en banc* (App., at 92-93) is unreported. The opinion of the district court affirming the decision of the bankruptcy court (App., at 58-65) is unofficially reported at 2005 WL 440798. The decisions of the bankruptcy court (App., at 66-91) are unreported.

JURISDICTION

The court of appeals' judgment was entered on June 9, 2006. A timely petition for rehearing was denied on July 11, 2006 (App., at 92-93). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 502(b) of the Bankruptcy Code (11 U.S.C. § 502(b)) states in pertinent part:

> Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount except to the extent that—
>
> * * *

(2) such claim is for unmatured interest;

* * *

STATEMENT

This case presents an important question concerning the interpretation of 11 U.S.C. § 502(b) on which the circuits are in conflict. Until the decision below, it was settled law that creditors' claims for future payment must be discounted to present value under § 502(b) to place them on equal footing with claims that are due immediately as of the petition date. The decision of the Third Circuit below marks the first time that a court of appeals has refused to apply § 502(b) to discount an obligation for future payment. It creates a conflict not only with the Sixth and Tenth Circuits, but also with a broad range of bankruptcy courts who have found § 502(b)'s command unambiguous. The underlying issue is an important one because it involves the claims allowance process, which is central to the administration of the Bankruptcy Code. And this case is an ideal vehicle for considering the issue: The Third Circuit directly addressed and rejected the conflicting interpretations of the other circuits; the issue is outcome determinative for this case; more than $20 million turns on the question in this case alone; and the appeal arose on stipulated facts.

A. The Structure of the Bankruptcy Code and its Treatment of Claims for Future Obligations

To grant debtors a fresh start, the Bankruptcy Code sweeps in all claims existing against a debtor as of the

petition date; disallows some aspects of those claims; discounts claims for future obligations to present value to place all creditors on an equal footing; and distributes property to satisfy the claims under the debtor's plan of reorganization.

The Bankruptcy Code defines "claims" against a debtor expansively to include future obligations because its goal is inclusive: to settle all claims and grant a fresh start to the debtor. The definition of "claim" therefore embraces any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A). As this Court has explained, "Congress intended by this language to adopt the broadest available definition of 'claim.'" *Johnson* v. *Home State Bank*, 501 U.S. 78, 83 (1991).

Because the Code defines "claim" so broadly, creditors may assert immediately their right to future payments that otherwise would not have been due for years. In this sense, a bankruptcy petition "operates as the acceleration of the principal amount of all claims against the debtor." *In re Manville Forest Prods. Corp.*, 43 B.R. 293, 297 (Bankr. S.D.N.Y. 1984), *rev'd, in part, on other grounds*, 60 B.R. 403 (S.D.N.Y. 1986).

All claims for future rights to payment may be *filed*, but not all claims are *allowed*. If no party in interest objects, the full filed claim is allowed. 11 U.S.C. § 502(a). But upon objection, § 502(b) and its subdivisions narrow the scope of allowed claims according to the policy decisions of Congress. They disallow some claims in their entirety and adjust all claims for future obligations to

present value so they can be treated equally. Section 502(b)(2), for example, entirely disallows claims for "unmatured interest." 11 U.S.C. § 502(b)(2). And, "[t]o insure the relative equality of payment between claims that mature in the future and claims that can be paid on the date of bankruptcy" (*Pension Benefit Guar. Corp.* v. *CF&I Fabricators of Utah, Inc.* (*In re CF&I Fabricators of Utah, Inc.*), 150 F.3d 1293, 1300 (CA10 1998)), section 502(b) itself requires courts to discount all future claims to present value by instructing the courts to "determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition." 11 U.S.C. § 502(b).

Ultimately, allowed claims are entitled to a pro rata distribution of the assets of the bankruptcy estate, according to the sufficiency of the assets to meet the claims. Then, when the debtor's plan of reorganization is consummated, all claims are discharged and deemed satisfied and released.

B. The Claims for Future Obligations Filed by Respondent JPMorgan

This case reaches the Court on undisputed facts. App., at 10 ("The parties do not dispute the Bankruptcy Court's factual findings."). At issue are $29.2 million in claims for future principal payments—due from 2011 through 2029—filed by JPMorgan Chase Bank against Oakwood Homes Corporation, the Debtor.

JPMorgan's claims arise from certificates of interest purchased in Real Estate Mortgage Investment Conduit ("REMIC") securitization trusts. The REMIC trusts, created by an Oakwood corporate affiliate, were established to

finance Oakwood's business. App., at 68. Oakwood designs, builds, and sells manufactured modular homes. *Id.*, at 67. It finances the majority of its sales through retail installment contracts or mortgages, and, to convert those long-term payment streams into immediate cash, Oakwood sells the individual obligations to the REMIC trusts. *Id.*, at 68. The trusts "securitize" the underlying individual obligations: They pool the individual streams of principal and interest payments and sell pass-through certificates to investors. *Ibid.* The certificates entitle the holders to receive monthly principal and interest payments funded by monthly collections on the underlying installment contracts and loans. *Ibid.* Not all certificates, however, are created equally. They are instead created in tranches holding different priorities to payment. *Id.*, at 4-5.

JPMorgan's claims are based on the lowest-priority certificates issued by the REMIC trusts, the Class B-2 Certificates. App., at 68. The B-2 Certificates are entitled to payment from the trusts only if all of the higher priority trusts are first paid in full and assets remain. *Id.*, at 4-5. To enhance the marketability of the low-priority B-2 Certificates, Oakwood issued limited guarantees of the payments on them. *Id.*, at 5, 68. Shortfalls on the B-2 Certificates thus become obligations of Oakwood as they occur.

The drafting of the REMIC trust documents establish two key, stipulated facts about the B-2 Certificates and JPMorgan's claims based upon them:

Timing. JPMorgan is not entitled to be paid the first of the principal payments underlying its claims until 2011, and it will not receive the last payment until 2029. App., at 63.

No acceleration. A default by the REMIC trust on any particular set of payments does not entitle the investors to accelerate any of the remaining payments due under the trust. Investors did not loan money to the trust and therefore are not entitled to accelerate repayment of a loan. They purchased certificates and are entitled only to the payments specified by the certificates, at the time they are specified. App., at 63.

Shortly after the REMIC trusts were created and investments in them were sold, it became clear that the assets coming into the trusts were going to be insufficient to make all the payments to the B-2 Certificate holders, and that Oakwood would therefore be called upon to make good on its guarantee on an ongoing basis into the future.

When Oakwood filed for bankruptcy, JPMorgan filed proofs of claim totaling over $1 billion based on Oakwood's guarantees of the underlying trust obligations. Through litigation and agreements, the amount of that $1 billion that is still at issue has been reduced to the $29.2 million described above, which represents anticipated future shortfalls in principal payments by certain of the REMIC trusts. In the litigation below, the parties stipulated to how far short the trusts were going to fall in the future on their payment obligations, and thus stipulated to the amount that Oakwood would be called upon to guarantee. App., at 63, 70, 75, 80, 85, 90. The parties also stipulated to the present value at the time of the bankruptcy of JPMorgan's claims—$8.2 million. *Ibid.* What the parties did not agree upon was whether the claims should be discounted at all.

C. The Bankruptcy Proceedings on JPMorgan's Claims

After JPMorgan filed its proofs of claim, Petitioner U.S. Bank, which serves as successor indenture trustee for holders of over $300 million in general unsecured claims, objected to the claims. First, they included unmatured interest that is disallowed by 11 U.S.C. § 502(b)(2). Second, they included claims for future payments of principal that must be discounted to present value under 11 U.S.C. § 502(b).

The Bankruptcy Court, which exercised jurisdiction under 28 U.S.C. §§ 157 and 1334 (App., at 67), agreed with Petitioner on both grounds.[1] It held that "the Limited Guarantee Claims are disallowed pursuant to section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date." App., at 69. The court further held that "Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date." *Ibid.*

JPMorgan appealed to the United States District Court for the District of Delaware, which exercised jurisdiction under 28 U.S.C. §§ 158(a) and 1334 (App., at 61) and affirmed on both points. The court concluded that "a plain reading of section 502(b) supports the Bankruptcy Court's decision" (App., at 62) because "section 502(b)'s

[1] The Bankruptcy Court issued five orders addressing the five sets of REMIC trusts. App., at 66-91. The legal analysis is identical in each order. For ease of reference, we cite just the first order.

language clearly and unambiguously required the Bankruptcy Court to both discount the instant claims to present value and exclude post-petition interest." App., at 63.

D. Decision of the Court of Appeals

On appeal to the Third Circuit, JPMorgan abandoned its claim for unmatured interest and argued only that the lower courts had improperly applied § 502(b) to discount to present value its claims for future principal payments. Over a dissent by Judge Smith, the Third Circuit reversed.

The Third Circuit concluded first of all that it would be inequitable both to disallow interest and discount the principal on the same claim. The majority "acknowledge[d] that money received today is more valuable than money negotiated to be received in the future." App., at 22. It therefore "wholeheartedly agree[d] that future liabilities must be reduced in some way to reflect the time value of money." *Id.*, at 28. But, the majority concluded, it is not appropriate both to disallow interest on an interest-bearing claim under § 502(b)(2) and to discount the future principal payments under § 502(b), because those two steps both adjust for the time value of money and are economic equivalents. Thus, "once unmatured interest has been disallowed, discounting the remainder of the claim to present value would inequitably twice penalize the creditor for the time value of money." App., at 28.

Having determined what equity required, the Third Circuit rejected the argument that § 502(b) unambiguously required something else—the discounting of all future obligations. "Stated simply, 11 U.S.C. § 502(b) speaks in terms of determining the 'amount' of a claim 'as of' the petition date. However, given that the remainder of

the Bankruptcy Code uses the term 'value, as of' to signify discounting to present value, and 'amount' and 'value' are not synonymous, we cannot say that § 502(b) clearly and unambiguously requires discounting to present value in all situations." App., at 16. The majority emphasized, however, that it was not concluding that discounting was never allowed, just that it was not compelled. "We do not hold here that 11 U.S.C. § 502(b) *never* authorizes discounting a claim to present value, but instead that the statute does not clearly and unambiguously *require* it for all claims evaluated under § 502." App., at 22.

Because it found the text of § 502(b) ambiguous, the majority consulted the legislative history of § 502(b)(2), which states in pertinent part:

> Section 502(b) thus contains two principles of present law. First, interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph. Second, *bankruptcy operates as the acceleration of the principal amount of all claims* against the debtor. One unarticulated reason for this is that *the discounting factor for claims* after the commencement of the case *is equivalent to [the] contractual interest rate on the claim.* Thus, this paragraph *does not cause disallowance of claims that have not been discounted to present value because of the irrebutable presumption that the discounting rate and the contractual interest rate (even a zero interest rate) are equivalent.*

App., at 25 (quoting H.R. Rep. No. 95-595, at 352-54 (1977) (emphasis added by the court)).

Ultimately, relying on the legislative history and the court's own reasoning that disallowing interest and discounting principal were economic equivalents, the court concluded that discounting could not be applied to JPMorgan's claims for future principal payments: "The Bankruptcy Court erred: Interest-bearing debt should not be discounted to present value after unmatured interest has been disallowed pursuant to § 502(b)(2)." App., at 31.

Judge Smith dissented. "The majority's reasoning today unnecessarily casts doubt on a long-standing, broadly-recognized, and well-justified principle arising under the Bankruptcy Code: that in order to avoid a windfall for certain creditors, claims based on future obligations should be discounted to present value before those obligations become eligible for immediate distribution." App., at 32. "[A]s the majority itself notes, insofar as the majority's reasoning does not appear to depend on the future obligations taking the form of interest-bearing loan obligations, the majority's reasoning places our court at odds with the reasoning of all other courts to address these issues." *Id.*, at 45.

In Judge Smith's view, § 502(b)(2) acts to accelerate all remaining principal payments, so they are presently due and thus need not be discounted. App., at 37. Consequently, he agreed that principal amounts of interest-bearing obligations should not be discounted. *Id.*, at 42. In this case, however, Judge Smith interpreted the underlying guarantee issued by Oakwood to create a unified payment obligation, not separable principal and interest payments. *Id.*, at 46-51. Therefore, he concluded, the Bankruptcy Court had correctly discounted the stream of payments to present value, and that aspect of its ruling should be affirmed. *Id.*, at 55. The Bankruptcy Court was

incorrect to disallow interest payments, because in truth there was no interest, but JPMorgan did not appeal that point and so had waived it. *Id.*, at 54-55.

REASONS FOR GRANTING THE PETITION

I. The Circuits Are Divided Over The Interpretation Of 11 U.S.C. § 502(b)

The decision below creates a 2-1 split in the circuits, as well as a broader split between the Third Circuit and the bankruptcy courts, over the interpretation of § 502(b). This divide among the Circuits on an important issue of bankruptcy law merits the Court's review. *See Pennsylvania Dep't of Pub. Welfare* v. *Davenport*, 495 U.S. 552, 557 (1990) (granting certiorari "[t]o address a conflict among Bankruptcy Courts on this issue"); *Howard Delivery Serv., Inc.* v. *Zurich Am. Ins. Co.*, ___ U.S. ___, 126 S. Ct. 2105, 2110 (2006) (granting certiorari "to resolve a split among the Circuits concerning the priority status" of claims in bankruptcy).

Until the decision below, it was settled law that the text of § 502(b) unambiguously requires bankruptcy courts to discount all future obligations to present value as of the date of the bankruptcy petition. *See CF&I*, 150 F.3d, at 1300 ("[T]he Bankruptcy Code mandates that all claims for future payment must be reduced to present value"); *Pension Benefit Guar. Corp.* v. *Belfance* (*In re CSC Indus., Inc.*), 232 F.3d 505, 508 (CA6 2000) ("[T]he bankruptcy court must value present claims and reduce claims for future payment to present value. . . ."); *In re O.P.M. Leasing Servs., Inc.*, 79 B.R. 161, 165 (S.D.N.Y. 1987) ("clear language of § 502(b)" requires discounting); *In re*

Thomson McKinnon Sec., Inc., 149 B.R. 61, 75 (Bankr. S.D.N.Y. 1992) (future payments "must be discounted"); *In re Loewen Group Int'l, Inc.*, 274 B.R. 427, 432 (Bankr. D. Del. 2002) ("[T]he plain language of § 502(b) requires the Court to discount the Claims to present value as of the Petition Date"); *Pereira* v. *Nelson* (*In re Trace Int'l Holdings, Inc.*), 284 B.R. 32, 38 (Bankr. S.D.N.Y. 2002) ("unambiguous language" of § 502(b) requires discounting). *Cf. Kucin* v. *Devan*, 251 B.R. 269, 273 (D. Md. 2000) (applying discounting).

Both the Sixth and the Tenth Circuits recently reiterated that § 502(b) unambiguously requires courts to discount future payment obligations to present value. *See Belfance*, 232 F.3d, at 508 (CA6); *CF&I*, 150 F.3d, at 1300 (CA10). In *CF&I*, the Tenth Circuit considered a claim held by the Pension Benefit Guaranty Corporation against the debtor for future payments to fund pension benefits. Interpreting § 502(b), the Tenth Circuit held that "[t]o insure the relative equality of payment between claims that mature in the future and claims that can be paid on the date of bankruptcy, the Bankruptcy Code *mandates* that *all* claims for future payment must be reduced to present value." *Ibid.* (emphasis added). Later, the Sixth Circuit addressed the same type of claim for future funding of pension benefits and reached the same conclusion. It held that, because § 502(b) requires the court to "'determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition,'" "[t]herefore, the bankruptcy court *must* value present claims and reduce claims for future payment to present value. . . ." *Belfance*, 232 F.3d, at 508 (emphasis added) (quoting 11 U.S.C. § 502(b)).

The Third Circuit's finding of textual ambiguity in § 502(b)—and its refusal to discount some future payment obligations—creates a clear split with its sister circuits. Indeed, the Third Circuit acknowledged that the decisions of other courts finding § 502(b) "clear and unambiguous" are "contrary to our holding." App., at 24 n. 13. Respondents may attempt to minimize the split by contending that other courts have addressed only non-interest-bearing future obligations, while the decision below addresses interest-bearing claims. But that is a distinction without a difference, because there is no reasoned way to distinguish the two types of claims for purposes of discounting the principal. *See infra*, at 15-16. In addition, the conflict is in fact plain. The Sixth and Tenth Circuits both concluded that § 502(b) requires *all* future claims to be discounted, whereas the Third Circuit declared: "We reject . . . [the] baseline conclusion that 11 U.S.C. § 502(b) is clear and unambiguous." App., at 28. This irreconcilable difference in the interpretation of one of the key provisions in the Bankruptcy Code warrants review. *See Saxbe* v. *Washington Post Co.*, 417 U.S. 843, 846 (1974) (citing "an apparent conflict in approach to the question" between two circuits); *United States* v. *Nat'l Bank of Commerce*, 472 U.S. 713, 719 (1985) (citing a "conflict, directly or in principle, with decisions of other Courts of Appeal").

II. The Decision Below Is Incorrect And Introduces Confusion Into A Provision That Is Central To The Administration Of The Bankruptcy Code

The decision of the Third Circuit is clearly incorrect, and it introduces significant confusion into the application

of a provision that is central to the administration of the Bankruptcy Code.

The Third Circuit's decision is incorrect first because the plain language of § 502(b) requires the discounting of all future payments to present value: "[T]he court . . . *shall* determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition." 11 U.S.C. § 502(b) (emphasis added.) The term "shall" is mandatory, not permissive. *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). It "normally creates an obligation impervious to judicial discretion," *ibid.*, and its presence in § 502(b) is not softened by any other textual cues. Nor is there any ambiguity regarding *what* the text of § 502(b) requires. Its instruction to determine the amount of claims "as of the date of the filing of the petition" can only mean to discount claims to present value. *See, e.g., Belfance*, 232 F.3d, at 508 (quoting 11 U.S.C. § 502(b)). "Were postpetition claims always to be allowed in full . . . [the] language would be mere surplusage." *In re O.P.M. Leasing Servs., Inc.*, 79 B.R., at 165.

Even if the text were not clear, the fundamental bankruptcy policy of equal treatment of creditors would settle the issue and require discounting. *Howard Delivery Serv.*, 126 S. Ct., at 2109 ("[W]e are mindful that the Bankruptcy Code aims, in the main, to secure equal distribution among creditors."). A creditor who holds a claim to be paid $1,000 in the future is in a fundamentally different position than a creditor who holds a claim to be paid the same $1,000 immediately. Because of the time value of money, the future claim must be discounted to present value—else, bankruptcy would systematically favor creditors with future claims at the expense of creditors

with present claims. The Third Circuit not only acknowledged this principle, it agreed "wholeheartedly" that "future liabilities must be reduced in some way to reflect the time value of money. . . ." App., at 28. There is no mechanism in the Code to accomplish this reduction other than § 502(b).

What drove the Third Circuit to fight against the plain language and settled policy of § 502(b) was its belief that § 502(b)(2)'s disallowance of "unmatured interest" is simply another form of discounting to account for the time value of money, so that once interest has been disallowed it is inequitable to discount the principal. App., at 28. But that belief is simply incorrect. Section 502(b)(2) codifies the age-old rule, adopted from "the English bankrupt system[,] . . . that everything stops at a certain date. Interest [is] not computed beyond the date of the commission." *Sexton* v. *Dreyfus*, 219 U.S. 339, 344 (1911) (Holmes, J.). One justification for the rule of § 502(b)(2) is that it avoids "the administrative inconvenience of continuous recomputation of interest causing recomputation of claims." *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. 156, 164 (1946); *see also City of New York* v. *Saper*, 336 U.S. 328, 330 (1949) (same). Another justification is that the rule protects the debtor's estate against penalties for delayed payment, because delay is often necessary for the protection and preservation of the estate for the creditors as whole. *Vanston*, 329 U.S., at 163; *see also In re Fesco Plastics Corp.*, 996 F.2d 152, 155 (CA7 1993). In addition, the rule preserves the respective positions the creditors hold as of the date of the petition. Creditors with higher interest rates cannot gain advantage by delaying distribution to get a greater percentage of the estate; creditors with lower rates need not push the

proceedings ahead to protect their interest. The rule thus ensures that creditors suffer "neither gain nor loss caused solely by delay." *Vanston*, 329 U.S., at 164. Section 502(b)(2) is thus wholly consistent with the policy of treating creditors equally—just not in the way that the Third Circuit erroneously believed.

The Third Circuit's erroneous belief that § 502(b)(2) is a discounting rule led it to interpret the actual discounting provision—§ 502(b)—in a way that violates not only the policy of equal treatment of creditors, but also the fundamental rule that bankruptcy law does not grant creditors any greater rights than they possessed on the underlying obligations. First, the interpretation violates equality by refusing to discount JPMorgan's claims for future payment obligations, when all other claims for future obligations are discounted. Second, the Third Circuit's application of § 502(b) ignores the rule that "[c]reditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation. . . ." *Raleigh* v. *Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000). JPMorgan stipulated that the securitization agreements entitled it only to future payments of principal, without any right to accelerate those payments upon default. The Third Circuit overrode that contractual agreement by treating the payments as if they were accelerated—and it therefore violated this Court's repeated instruction that "[b]ankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law controlling the validity of creditors' entitlements, but are limited to what the Bankruptcy Code itself provides." *Id.*, at 24-25. Even if the Third Circuit had been correct in its view of the equities, it still had no authority to implement its view by ignoring the terms of the Bankruptcy Code. As

this Court recently explained, "Our unwillingness to soften the import of Congress' chosen words even if we believe the words lead to a harsh outcome is longstanding. It results from 'deference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill.'" *Lamie* v. *United States Tr.*, 540 U.S. 526, 538 (2004) (quoting *United States* v. *Locke*, 471 U.S. 84, 95 (1985) (citation omitted)). Nothing in the Code allowed the Third Circuit to legislate equity. Instead, the unambiguous language of § 502(b) enacted by Congress required the court to discount JPMorgan's claims to present value.

The Third Circuit's attempt to create ambiguity in § 502(b)'s discounting rule only highlights the incorrectness of its interpretation. Focusing on the term "amount" in § 502(b)'s instruction to "determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition," the court noted that, in other places, the Code uses the term "value" when it requires discounting. The court therefore inferred ambiguity from the different term. The difference in terminology, however, is explained not by a difference in the discounting rule but by a difference in context. The Code uses "value" to describe property distributions and "amount" to describe dollar claims, so that the value of property distributions can accurately be compared to the amount of allowed claims. *See*, *e.g.*, 11 U.S.C. §§ 1129(a)(7)(A)(ii) ("property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive"); 1225(a)(4) ("the value, as of the effective date of the plan, of property to be distributed under the plan . . . is not less than the amount that would be paid on such claim"); 1225(a)(5)(B)(ii) ("the value, as of the effective

date of the plan, of property to be distributed . . . is not less than the allowed amount of such claim"); 1225(b)(1)(A) ("the value of the property to be distributed under the plan . . . is not less than the amount of such claim"); 1325(a)(4), (a)(5)(B)(ii), and (b)(1)(A) (same as § 1225); 1328(b)(2) ("the value, as of the effective date of the plan, of property . . . is not less than the amount that would have been paid on such claim").

The textual source of the discounting command throughout the Bankruptcy Code is neither "value" nor "amount," but instead the instruction to calculate the one or the other "as of" a certain date. That instruction—contained in § 502(b) just as in every other section cited by the Third Circuit—unambiguously requires the discounting of future obligations. It is understandable, moreover, that the discounting instruction is applied to the "amount" of a claim only in § 502(b) and nowhere else in the Code. Nowhere else is the amount of the claim in flux. Claims are filed under § 501, settled under § 502, and used as a static dollar amount everywhere else. Section 502's whole purpose is to produce the dollar amount of allowed claims against which all distributions of property are subsequently measured. Congress's use of the term "amount" in connection with discounting in § 502(b) is thus not only proper, it is necessary. It could not have used "value" in § 502(b) without creating confusion throughout the rest of the Code.

Because the text of § 502(b) is clear, the Third Circuit erred in looking to legislative history. As this Court recently concluded, "We should prefer the plain meaning [of the Bankruptcy Code] since that approach respects the words of Congress. In this manner we avoid the pitfalls that plague too quick a turn to the more controversial

realm of legislative history." *Lamie*, 540 U.S., at 536. Even if consulting legislative history were permissible, the legislative history cited by the Third Circuit is unpersuasive. According to the legislative history, § 502(b) contains an "irrebutable presumption that the discounting rate and the contractual interest rate (*even a zero interest rate*) are equivalent." H.R. Rep. No. 95-595, at 353 (1977) (emphasis added). If this were correct, then future obligations could *never* be discounted: If the interest rate is greater than zero, only the interest is disallowed; if no interest is contractually allowed, then the discounting rate is irrebutably zero. No court believes this. Even the Third Circuit rejected the view that § 502(b) "*never* authorizes discounting a claim to present value." App., at 22. The Court should place no weight on legislative history that so plainly contradicts the language, history, and fundamental policies of the Code.[2]

In another recent case involving the interpretation of the Bankruptcy Code, this Court noted that "the uncertainty and increased complexity that would be generated by the trustee's position is another reason to stick with the simpler rule." *Raleigh*, 530 U.S., at 26. The same is true here. What is striking and ultimately indefensible about the Third Circuit's interpretation of § 502(b) is that, having identified a claimed textual ambiguity, the court never resolves it but instead claims authority to read § 502(b) sometimes one way and sometimes another.

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[2] Similarly, the Court need not consider the text of prior statutes, because the text of the Code is clear. "The starting point in discerning congressional intent is the existing statutory text, and not the predecessor statute[s]." *Lamie* v. *United States Tr.*, 540 U.S. 526, 534 (2004) (citation omitted).

Sometimes § 502(b) requires discounting, other times not—and there are no textual cues to help courts distinguish the one from the other. This approach introduces unnecessary uncertainty and complexity into the Code. The simpler rule, and the one consistent with the text of § 502(b), the history of the Code, and the policies of equality among creditors and respecting the underlying obligations created by state law, is to discount all future obligations to present value.

The uncertainty introduced by the Third Circuit into a fundamental provision of the Bankruptcy Code is reason not only to reject the Third Circuit's interpretation, but also to review it. In the year ending in December 31, 2005 alone, there were 2,078,415 bankruptcy filings (http://www.uscourts.gov/bnkrpctystats/statistics.htm). The power to allow claims is of "basic importance in the administration of a bankruptcy estate" in all these cases. *Gardner* v. *New Jersey*, 329 U.S. 565, 573 (1947). The Court should grant review of the decision below to settle this central issue of bankruptcy law. *Saper*, 336 U.S., at 328 (granting review to consider issue "of considerable practical importance in the administration of the Bankruptcy Act.").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 05-2032 & 05-2033

IN RE: OAKWOOD HOMES CORPORATION,
Debtor

JEFFERSON-PILOT LIFE INSURANCE COMPANY; JEFFERSON-PILOT FINANCIAL INSURANCE; TYNDALL PARTNERS, LP and TYNDALL INSTITUTIONAL PARTNERS, LP,
Appellants in No. 05-2032

(D.C. Civil Nos. 04-cv-00835, 04-cv-00836, 04-cv-00837, 04-cv-00838 and 04-cv-00839)

*(Amended in accordance with Clerk's Order dated 7/22/05).

IN RE: OAKWOOD HOMES CORPORATION,
Debtor

JP MORGAN CHASE BANK,
Appellant in No. 05-2033

(D.C. Civil Nos. 04-cv-00835, 04-cv-00836, 04-cv-00837, 04-cv-00838 and 04-cv-00839)

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil Nos. 04-cv-00835, 04-cv-00836,
04-cv-00837, 04-cv-00838 and 04-cv-00839)
District Judge: Honorable Joseph J. Farnan, Jr.

Argued Feb. 21, 2006

Before: McKEE, SMITH, and
VAN ANTWERPEN, Circuit Judges

(Filed: June 9, 2006)

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OPINION OF THE COURT

VAN ANTWERPEN, *Circuit Judge.*

Consolidated before us are two appeals by JP Morgan Chase Bank ("JP Morgan"). JP Morgan challenges the District Court's order affirming the Bankruptcy Court's decision to reduce claims filed by JP Morgan, the trustee for the holders of certain certificates, after objections were filed by the U.S. Bank National Association ("U.S. Bank"), the indenture trustee for the holders of certain more senior notes. The Bankruptcy Court's dual, but related, rulings first disallowed any part of JP Morgan's claims for unmatured interest arising under a Guarantee on the certificates, then further discounted the principal of the

claims to present value. JP Morgan alleges that discounting the principal of the claims to present value is unauthorized by the Bankruptcy Code, and results in inequitable treatment of like creditors. JP Morgan does not appeal the District Court's affirmance of the Bankruptcy Court's disallowance of claims for unmatured interest. We will reverse the order of the District Court with respect to present value discounting of principal.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Oakwood and the Trusts

These appeals arise from the bankruptcy proceedings of Oakwood Homes Corporation ("Oakwood"), a builder and seller of prefabricated homes. Oakwood's subsidiaries frequently extended credit to home-buyers under long-term mortgage arrangements, then securitized these mortgages by selling them to trusts set up for this purpose ("the Trusts").[1] The Trusts issued various certificates in order to raise the money to pay Oakwood for the mortgages. The certificates were serviced by the Trusts with the funds paid by customers under their mortgages. The buyers of the certificates were entitled to periodic payments of principal and interest.

At issue here are certain low-priority certificates issued by several of the Trusts over the course of three years. The certificate holders represented by JP Morgan bought approximately $100 million of these certificates, known as "B-2 Certificates," from underwriters. With such

[1] The Trusts were known as Real Estate Mortgage Investment Conduit securitization trusts, or REMIC trusts.

low payment priority relative to other issued certificates, the B-2 Certificates were understandably difficult to market. Oakwood therefore provided a Guarantee of payment for the B-2 Certificates, whereby Oakwood promised to cover any shortfalls in payments by the Trusts of principal or interest. For example, in the Guarantee for one of the Trusts at issue here, Oakwood agreed to "unconditionally and absolutely guarantee [] the full and prompt payment to the Trustee on or prior to the Remittance Date relating to each Distribution Date of the Limited Guarantee Payment Amount."

The B-2 Certificates, and distributions thereon, were governed by the Pooling and Servicing Agreement for each Trust. One Trust at issue here, the 1997-D Trust,[2] issued certificates with a total principal value of over $250 million, of which about $10 million were B-2 Certificates. The Pooling and Servicing Agreement explicitly provided for "the distribution of the principal of and interest on the Certificates in accordance with their terms." The agreement specified the applicable interest rates, distribution dates, and priorities for each of the classes of issued certificates, including the B-2 Certificates. On each distribution date, the trustee of the Trust was instructed to distribute principal and interest payments to each class, in order of priority. Distribution dates stretched almost to the year 2030.

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[2] We, like the parties, will use the Guarantee and Pooling and Service Agreement applicable to the 1997-D Trust as representative of the documents defining all of the Trusts at issue.

The distributions from the Trusts fundamentally depended on the mortgage customers making their scheduled mortgage payments to the Trusts. This did not happen in many cases. The future ability of the Trusts to make principal and interest payments to the B-2 Certificate holders, who had the lowest payment priority, therefore came into doubt. Such nonpayment would trigger Oakwood's obligation under the Guarantees to ensure full payment of principal and interest to the B-2 Certificate holders.

B. Bankruptcy Proceedings

Oakwood filed for Chapter 11 bankruptcy protection on November 15, 2002, in the United States Bankruptcy Court for the District of Delaware. Various creditors filed proofs of claim with the Bankruptcy Court. U.S. Bank, for example, filed proofs of claim as indenture trustee for holders of $300 million of more senior notes issued directly by Oakwood. JP Morgan filed proofs of claim on behalf of B-2 Certificate holders, seeking over $1 billion. The holders of $605 million of these claims, covered under different Guarantees than those at issue here, settled their claims, leaving about $400 million in claims remaining.

JP Morgan alleged that because the Trusts were unable to fully service the B-2 Certificates, Oakwood was, and would continue to be, liable for the principal and interest shortfalls on the Certificates by virtue of the Guarantee. Of the $400 million in claims, about $116 million was attributable to future shortfalls in the Trusts' payment of *principal* to the B-2 Certificate holders. Another $1 million was attributable to shortfalls in the

Trusts' payment of *interest,* due *before* Oakwood filed its bankruptcy petition ("pre-petition interest"). The remainder was attributable to future shortfalls in *interest* payments, that would come due *after* the petition date ("post-petition interest" or "unmatured interest").

U.S. Bank filed objections to JP Morgan's claims on October 10, 2003, and November 21, 2003, pursuant to the objection provisions of 11 U.S.C. § 502. U.S. Bank alleged (1) JP Morgan's claims should not include post-petition interest; and (2) JP Morgan's remaining claims for principal payments should be discounted to present value as of the bankruptcy petition date. The parties stipulated to the shortfalls in principal and interest payments that Oakwood, as Guarantor, would be obligated to pay at various distribution dates on each Trust's B-2 Certificates.

Following several hearings, the Bankruptcy Court issued two rulings relevant here. First, the Bankruptcy Court at a hearing on November 26, 2003, disallowed any portion of JP Morgan's claims attributable to post-petition interest, totaling hundreds of millions of dollars, pursuant to 11 U.S.C. § 502(b)(2) ("allow such claim . . . except to the extent that . . . such claim is for unmatured interest"). Second, the Bankruptcy Court at a hearing on January 23, 2004, ruled without discussion or explanation that the portion of the claims attributable to *principal* shortfalls ($116,370,915) should be discounted to present value pursuant to language in 11 U.S.C. § 502(b) directing a court to "determine the amount of such claim . . . as of the date of the filing of the petition." The Bankruptcy Court entered orders on May 6, 2004, reflecting these rulings,

ultimately allowing JP Morgan's claims for pre-petition interest and $30,491,930 in principal claims.[3]

While immaterial to this appeal, we note that the Bankruptcy Court approved a reorganization plan for Oakwood on April 16, 2004. JP Morgan will ultimately receive a distribution equal to between 37.4% and 50% of its allowed claims.

C. Appeals and Collateral Litigation

Acting now on behalf of the holders of B-2 Certificates allegedly entitled to $95.5 million (of the $116 million at issue in the Bankruptcy Court) in future principal shortfall payments, JP Morgan appealed the Bankruptcy Court's Orders to the District Court for the District of Delaware on May 17, 2004. The District Court affirmed both of the Bankruptcy Court's rulings – disallowing interest and discounting principal – on February 22, 2005.

The District Court rejected JP Morgan's argument that 11 U.S.C. § 502(b) did not require discounting an interest-bearing unmatured principal claim to present value *on top of* disallowing all post-petition interest, and that such a further reduction would be "double discounting." In so doing, the District Court held that § 502(b) was clear and unambiguous in its instruction to discount a claim to present value. The District Court stated that it

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[3] $30,491,930 represents the $116,370,915 in principal shortfalls, discounted to present value using a discount rate of 7.74% chosen by the Bankruptcy Court on March 12, 2004. The parties stipulated to the principal and interest shortfalls, and the corresponding discounted amounts, while reserving their right to appeal the discounting.

was "not persuaded that the distinction between interest-bearing claims and non-interest-bearing claims is significant to the issue at bar." Although the Bankruptcy Court had provided no explanation for its rulings, the District Court concluded that the Bankruptcy Court's previous holding in *In re: Loewen Group International, Inc.*, 274 B.R. 427 (Bankr.D.Del.2002), was "persuasive." The District Court also agreed with the Bankruptcy Court that § 502(b)(2) explicitly disallowed post-petition interest.

JP Morgan appealed the District Court's Order in three separate appeals (representing various B-2 Certificate holders), which this Court consolidated on April 12, 2005. JP Morgan appealed only the decision to discount the principal shortfalls to present value, and did not challenge the disallowance of post-petition interest. This Court dismissed one of the appeals, docketed at No. 05-2034, on December 20, 2005, pursuant to a joint stipulation of the parties. Remaining before us are claims for roughly $30 million (undiscounted) in principal shortfalls for which Oakwood will be liable.

Following the filing of JP Morgan's notices of appeal, the parties continued to litigate collateral effects of the claims issues in the courts below. The Bankruptcy Court ordered the Oakwood estate to reserve $61 million to cover JP Morgan's claims appeals if JP Morgan posted a bond; JP Morgan declined to post the bond, and both the District Court and this Court refused to stay distributions from the estate. The District Court later granted such a stay without bond, then rescinded the stay and affirmed the Bankruptcy Court's ultimate setting of a $0 cash reserve absent posting of a bond. On December 19, 2005, we stayed the appeals of the latter order pending our resolution of the instant appeals.

II. JURISDICTION AND STANDARD OF REVIEW

The Bankruptcy Court had jurisdiction over Oakwood's Chapter 11 filing pursuant to 28 U.S.C. § 157. The District Court had jurisdiction to hear an appeal from a ruling of the Bankruptcy Court pursuant to 28 U.S.C. § 158(a). This Court has jurisdiction over this appeal pursuant to 28 U.S.C. §§ 158(d), 1291.

The parties do not dispute the Bankruptcy Court's factual findings. We exercise plenary review over the Bankruptcy Court's legal decisions, and application of law to fact. *In re Telegroup, Inc.*, 281 F.3d 133, 136 (3d Cir.2002). "Because the District Court sat below as an appellate court, this Court conducts the same review of the Bankruptcy Court's order as did the District Court." *Id.*

III. ANALYSIS

Because JP Morgan did not appeal the District Court's affirmance of the Bankruptcy Court's ruling disallowing any claim for post-petition interest under 11 U.S.C. § 502(b), the only issue before us is whether the Bankruptcy Court erred by "double discounting" when it discounted the principal component of the claims to present value after also having disallowed the post-petition interest portion of the claims. We hold that this was, indeed, error, and we will reverse for the reasons set forth below.

Given the complexity of the issue at hand, we will set out up front the parties' main contentions and our conclusions. JP Morgan alleges that the Bankruptcy Court should not have "double discounted" its claims by disallowing that part of the claims attributable to post-petition interest, and then further reducing the claims by discounting the

remainder to present value. U.S. Bank argues that discounting to present value is required by the clear and unambiguous language of 11 U.S.C. § 502(b), which instructs a court to "determine the amount of such claim . . . as of the date of the filing of the petition," regardless of whether the court has already reduced the claim by disallowing post-petition interest under § 502(b)(2). U.S. Bank also argues that § 502(b)(2) is irrelevant to the issue of discounting because the claims only arise under a Guarantee, and not from an obligation to pay separable interest plus principal.

We conclude that JP Morgan's claims involve separable interest and principal, and not merely a single future liability on Oakwood's part that would be discounted to reflect the time-value of money. We find that 11 U.S.C. § 502(b) is far from clear and unambiguous in light of other sections of the Bankruptcy Code, and the admitted different plain meanings of the words "amount" and "value." Inquiry into the legislative history of the provision shows that the Bankruptcy Court could have either disallowed post-petition interest or discounted the entire claim to present value – but not both. We note that our colleague in dissent is in agreement on the latter part of this proposition – that both disallowing post-petition interest and discounting the claim to present value would be impermissible and inequitable double discounting.

A. The Claims

On appeal, appellee U.S. Bank attempted to fill in and defend the Bankruptcy Court's silent reasoning by alleging that the documents providing the foundation for JP Morgan's claims – the Guarantee and the Pooling and

Servicing Agreement – show a simple agreement to receive money in the future, and that basic economics and the Bankruptcy Code require money received in the future to be discounted to present value. U.S. Bank also contends that because the claims are being made only on the Guarantee, and not on the B-2 Certificates themselves, the claims should be treated similarly as a mere future liability. JP Morgan responds that the documents, as well as the Bankruptcy Court's approach to the claims and U.S. Bank's own litigation strategy and admissions, prove that the claims are for future payments of separable principal and interest. We agree.

We begin with the documents themselves. The Pooling and Service Agreement, which governs the B-2 Certificates at issue here, clearly defined the Certificates in terms of principal and interest distributions at set dates. *See, e.g.*, 1997-D Pooling and Service Agreement, at § 3 (defining the certificate classes, their pass-through rates, and initial principal balances); *id.* at § 5 (setting out the order of priority for principal and interest payments on each distribution date); *id.* at § 10 (stating that "[i]nterest on the . . . Class B-2 Certificates will be computed on the basis of a 360-day year consisting of twelve 30-day months"). Based on their governing documents, the B-2 Certificate holders were intended to be entitled to both principal and interest payments throughout the certificate lifetime.

The fact that the claims here arise only because of Oakwood's obligations under the Guarantee does not change the fundamental economic nature of the B-2 Certificate holders' bargained-for transaction. The Guarantee applicable to the 1997-D Trust B-2 Certificates states that Oakwood "unconditionally and absolutely

guarantees the full and prompt payment . . . of the Limited Guarantee Payment Amount (as such term is defined in the Pooling and Service Agreement), if any" for each scheduled distribution date. Turning back to the Pooling and Service Agreement, we see that "Limited Guarantee Payment Amount" is defined as follows:

> "With respect to any Distribution Date, *the amount* after giving effect to the allocation of the Available Distribution Amount for such date, *equal to the amount of shortfalls* in collections on the Assets otherwise distributable on such Distribution Date *not in excess of the sum* of (a) *any unpaid Interest* Distribution Amount, Carryover Interest Distribution Amount, Writedown Interest Distribution Amount and Carryover Writedown Distribution Amount distributable on such Distribution Date . . . and (b) *any unpaid principal amounts* payable on such Distribution Date. . . ."

1997-D Pooling and Service Agreement, at § 2 (emphases added). After parsing this rather dense language, the Guarantee reduces to the following: Oakwood promised to cover any shortfall resulting from the Trust's inability to make distributions of *interest and principal* to the B-2 Certificate holders.[4]

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[4] We also take note of the Declaration of Oakwood's Executive Vice President, filed with the Bankruptcy Court, setting forth his understanding of the Guarantee as the supervisor of Oakwood's securitization operations. The Declaration repeatedly states that the Guarantees were intended to ensure the distribution of principal and interest to the B-2 Certificate-holders in the event of a shortfall. Moreover, according to the Declaration, Oakwood's financial statements listed liability under the Guarantees in an amount that "reflects potential payments [by Oakwood] of both principal and interest on the B-2 Certificates."

We note that the approach of the Bankruptcy Court throughout this litigation illustrates JP Morgan's claims for future, separable, payments of principal and interest, and not simply for a lump sum of money payable in the future, as U.S. Bank would have us believe. The Bankruptcy Court allowed the portion of JP Morgan's claims attributable to pre-petition interest; disallowed the portion attributable to post-petition interest; and then treated the principal portion separately. The Bankruptcy Court similarly stated that it was irrelevant whether the claim arose against a guarantor instead of a primary obligor. Hearing, Bankruptcy Court, November 26, 2003. U.S. Bank itself urged this approach – separating interest and principal – throughout proceedings in this Court, the District Court, and the Bankruptcy Court.

We do not accept U.S. Bank's argument that simply because the claims technically arise from the Guarantee, we should not treat them like normal claims based on an instrument obligating the payor to make periodic distributions of principal and interest. The Guarantee itself refutes this stance, and U.S. Bank has consistently taken the contrary position. As we have noted above, the Guarantee obligates Oakwood to take over payment of principal and interest to B-2 Certificate holders in the event of any shortfalls. This places Oakwood, the guarantor, in exactly the same position as the Trusts, the primary obligors, with respect to the obligation to make these principal and interest payments.

We conclude that as a matter of economics based on the governing B-2 Certificate documents, JP Morgan's claims consist of separable interest and principal components, and do not merely represent a singular future liability. We must still decide, though, whether 11 U.S.C.

§ 502(b) requires discounting the principal component of those claims after the interest component has already been disallowed under § 502(b)(2).

B. 11 U.S.C. § 502(b)

The Bankruptcy Court held, and the District Court affirmed, that even after JP Morgan's claims for post-petition interest were disallowed, the principal owed under the Guarantee should be discounted to present value as of the petition date. In this limited appeal,[5] we express no view on whether the Bankruptcy Court correctly disallowed post-petition interest pursuant to 11

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[5] JP Morgan did not appeal the 11 U.S.C. § 502(b)(2) interest disallowance portion of the District Court's Order. Unlike our dissenting colleague, we do not believe that this strategic decision to appeal only the discounting substantially affects this appeal. Each court below addressed JP Morgan's claims in terms of two successive inquiries – whether any post-petition interest should be disallowed, and whether the principal should *then* be discounted. The answer to the former inquiry *has not been challenged* here by JP Morgan. Our colleague in dissent concludes, just as do we, that as a legal matter once § 502(b)(2) is applied to disallow post-petition interest, further reduction by discounting the remaining claim to present value is not permitted. *Dis. Op.* at 13. This *legal* conclusion does not hinge on the *factual* question resolved by the courts below – that the claims did involve post-petition interest – and can be decided independently in JP Morgan's favor.

We must therefore express our confusion at our dissenting colleague's conclusion, *Dis. Op.* at 1-2, that the courts below "did not otherwise err in holding that the B-2 Certificate holders' claims should be discounted to present value," and therefore that reversal is not required. The courts below determined that legally, it was permissible to discount a claim to present value *after* applying § 502(b)(2) to disallow any post-petition interest. The dissent appears to wholeheartedly disagree with this holding, as we read the dissent's conclusion that § 502(b)(2) necessarily implies reduction to present value, and therefore that § 502(b) should not be read to require a *second* discounting. *See Dis. Op.* at 11-14.

U.S.C. § 502(b)(2). We must decide only the narrower issue before us, whether *further* reduction of the claims by discounting is required or allowed by the Bankruptcy Code. We hold that it is not, but our rationale for so holding will require inquiry into various portions of the Bankruptcy Code and their legislative history.

Stated simply, 11 U.S.C. § 502(b) speaks in terms of determining the "amount" of a claim "as of" the petition date. However, given that the remainder of the Bankruptcy Code uses the term "value, as of" to signify discounting to present value, and "amount" and "value" are not synonymous, we cannot say that § 502(b) clearly and unambiguously requires discounting to present value in all situations.

We begin as we must with the plain language of the statute. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). First, though, we find it necessary to briefly explain how the Bankruptcy Code processes and allows claims. 11 U.S.C. § 101(5)(A) defines a "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secure, or unsecured." We have often said that "claim" was intended to be read very broadly. *E.g., In re: PPI Enters. (U.S.), Inc.*, 324 F.3d 197, 203 (3d Cir.2003). A "creditor or indenture trustee" seeking to make a claim on a bankruptcy estate is instructed to file a proof of claim pursuant to 11 U.S.C. § 501. All claims are presumptively "allowed" in full unless another party in interest in the proceedings files an objection. 11 U.S.C. § 502(a). If such an objection is made, as here, the Bankruptcy Court holds a hearing and reduces the allowable amount of the claim pursuant to the remainder of § 502. Specifically, the

Bankruptcy Court would look to a specific subsection of § 502(b), and as U.S. Bank argues, § 502(b) itself.

This brings us to the minutiae of 11 U.S.C. § 502(b). The Bankruptcy Court appears to have relied first on § 502(b)(2) for the proposition that post-petition interest should be disallowed, and then on § 502(b) overall[6] for the proposition that the principal remainder of the claims should be discounted to present value. JP Morgan contends that this ruling constituted impermissible "double discounting" of its claims. 11 U.S.C. § 502(b) states in pertinent part, with emphases added where relevant to the case at hand:

> "(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall *determine the amount of such claim in lawful currency of the United States as of the date of filing of the petition,* and shall allow

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[6] We say "appears to have relied on" because the Bankruptcy Court did not place its reasoning on the record. At the November 26, 2003 hearing, the Bankruptcy Court noted after argument that "[w]ith respect to the interest, it is my view that Section 502(b) does apply and interest is not allowable as part of the claim." With respect to discounting to present value, the Bankruptcy Court's sole action on the record was to cut off argument and state "[w]ell, look, my ruling is that they're going to be discounted. So let's just debate how – what rate to apply or the discount rate." Hearing, January 23, 2004.

The parties argued the case to the Bankruptcy Court in terms of 11 U.S.C. § 502(b) and § 502(b)(2), however, and we will assume that these were the bases for that court's holdings. We also note that the primary case cited by U.S. Bank in this dispute, *In re: Loewen Group International, Inc.*, 274 B.R. 427 (Bankr.D.Del.2002), relied on § 502(b) for the decision to discount the relevant claims to present value, and was issued by the same Bankruptcy Court.

such claim in such amount, except to the extent that –

> (1) such claim is *unenforceable* against the debtor and property of the debtor, *under any agreement or applicable law for a reason other than because such claim is contingent or unmatured*;
>
> (2) such claim is for *unmatured interest*;"

In response to JP Morgan's arguments, U.S. Bank contends the Bankruptcy Court, and the District Court in affirming, correctly held that the plain language of § 502(b), ordering a court to "determine the amount of such claim ... as of the date of filing of the petition," requires a Bankruptcy Court to discount a claim to present value regardless of whether § 502(b)(2) has already led the Bankruptcy Court to disallow the interest portion of the claim. JP Morgan responds that § 502(b) is far from clear and unambiguous when read holistically with the rest of the Bankruptcy Code, and that the legislative history behind § 502(b)(2), along with basic economics, shows the Bankruptcy Court erred.

1. Clear and Unambiguous?

Contrary to U.S. Bank's assertions, and the District Court's conclusion below, we do not believe 11 U.S.C. § 502(b) is clear and unambiguous. Inquiry into the rest of the Bankruptcy Code and the legislative history of 11 U.S.C. § 502(b) is therefore appropriate. *In re Price,* 370 F.3d 362, 369 (3d Cir.2004) (citing *United States v. Fisher,* 6 U.S. (2 Cranch) 358, 386 (1805)). The Supreme Court has instructed us to view the Bankruptcy Code holistically, instead of in isolated sections. *United Sav. Ass'n of Texas v.*

Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988).

Viewed against the remainder of the Bankruptcy Code, "amount of such claim . . . as of the date of the filing of the petition" simply does not clearly and unambiguously require discounting a claim to present value. Rather, "the *full face amount* of a debt instrument is the *proper amount of claim* in a bankruptcy case" where, as here, original issue discount is not at issue.[7] 4-502 COLLIER ON BANKRUPTCY ¶ 502.03 (5th rev. ed.2005) (emphases added).

We are not convinced that a plain reading of § 502(b) supports the Bankruptcy Court's conclusion. "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Neither "amount" nor "value" is defined in the Bankruptcy Code. *See* 11 U.S.C. § 101 (definitions). At argument, however, U.S. Bank conceded that "amount" does not mean the same thing as "value."[8]

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[7] Original issue discount reflects the fact that a claimant might have paid less than the face value on a note, and could therefore only recover in bankruptcy up to the amount actually paid. The interest portion of such a note would need to be similarly pro-rated for purposes of disallowing post-petition interest. To the extent that the B-2 Certificate holders may have similarly paid less than the face value for their notes, the parties do not dispute the principal shortfall amounts stipulated to and at issue here.

[8] "Amount" is defined by one dictionary as "the total number or quantity; a principal sum and the interest on it." WEBSTER'S THIRD NEW INT'L DICTIONARY (unabr.1965). "Value," in contrast, is defined as "the monetary worth or price of something; the amount of goods, services, or

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Most significant is how the Bankruptcy Code itself uses "amount" and "value." U.S. Bank argues that "as of the date of the filing of the petition" axiomatically requires that a present value calculation be performed on the "amount" of a claim. However, as JP Morgan correctly notes, where the Bankruptcy Code intends a court to discount something to present value, the Code clearly uses the term "value, as of" a certain date. *See, e.g.,* 11 U.S.C. §§ 1129 ("value, as of the effective date of the plan"), 1173 (same), 1225 (same), 1325 (same), 1328 (same). Many sources support the use of the term "value" for this purpose; *none* support U.S. Bank's contention that "amount . . . as of" also implies a present value calculation.[9] For example, *Collier on Bankruptcy,* in describing another section of the Bankruptcy Code, states that:

> "In three places in section 1129(b)(2), and in at least two other places in section 1129, confirmation requires that a creditor or interest holder receive property 'of a value, as of the effective date of the plan' equal to some amount, usually the allowed amount of the participant's claim. *Congress was clear that the use of this term meant that courts were to calculate the 'present value' of the property.*"

7-1129 COLLIER ON BANKRUPTCY ¶ 1129.06 (emphasis added); *id.* at n.3 ("This contemplates a present value analysis that will discount value to be received in the future.") (quoting H.R.Rep. No. 95-595, at 414 (1977)).

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money that something will command in an exchange." BLACK'S LAW DICTIONARY (8th ed.2004).

[9] U.S. Bank has not directed this Court to any other section of the Bankruptcy Code where discounting to present value was intended, and the term "amount" was used.

Thus, 11 U.S.C. § 502(b) does not contain the language used elsewhere in the Bankruptcy Code to require a present value calculation.

U.S. Bank is correct that in each of the Bankruptcy Code sections cited above, the Code refers only to the process by which the holders of already – allowed claims are paid from the bankruptcy estate. These sections permit a court, for example, to confirm a reorganization plan only if a holder of an impaired claim has accepted the plan or "will receive or retain under the plan on account of such claim or interest *property of a value, as of the effective date of the plan,* that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date." 11 U.S.C. § 1129(a)(7)(A) (emphasis added). However, these same sections also refer to the discounting of future cash *installment payments* to present value – virtually the exact financial situation we address today – by using the language "deferred cash payments of a value, as of the effective date of the plan," or "regular installment payments in cash – of a total value, as of the effective date of the plan." 11 U.S.C. §§ 1129(a)(9)(B)(i)-(C)(i). Where the Code speaks of discounting cash streams to present value, it speaks in terms of "value, as of" a certain date. It does not use "amount . . . as of."

Viewing the Bankruptcy Code holistically, we cannot say that the language of 11 U.S.C. § 502(b) clearly and unambiguously requires the same discounting to present value as is required in other sections of the Code.[10] *See also*

[10] Where Congress has explicitly mandated such discounting, commenters have taken note. *Collier on Bankruptcy* is replete with references to the present value calculations required by the Code

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7-1129 COLLIER ON BANKRUPTCY ¶ 1129.06 (emphasis added) ("The relevant date for *all determinations of present value* required by the Code is the 'effective date' of the plan.").

We do not hold here that 11 U.S.C. § 502(b) *never* authorizes discounting a claim to present value, but instead that the statute does not clearly and unambiguously *require* it for all claims evaluated under § 502.[11] In general, we of course acknowledge that money received today is more valuable than money negotiated to be received in the future, and reduction in recognition of that basic economic fact may sometimes be appropriate. The subsections of § 502(b) encompass various financial circumstances, however, as our colleague in dissent points

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sections mentioned above. *See, e.g.*, 7-1129 COLLIER ON BANKRUPTCY ¶ 1129.03; *id.* ¶ 1129.04; *id.* ¶ 1129.06; 8-1225 COLLIER ON BANKRUPTCY ¶ 1225.02; 8-1325 COLLIER ON BANKRUPTCY ¶ 1325.06. Yet, in discussion of 11 U.S.C. § 502(b), we learn that it means something far different. The task of "determin[ing] the amount of such claim" is straightforward if the claim is liquidated; if unliquidated or contingent, the claim is estimated under 11 U.S.C. § 502(c), a provision not at issue here, or liquidated by the court. 4-502 COLLIER ON BANKRUPTCY ¶ 502.03. *Nowhere* is discounting to present value mentioned. The second element of 11 U.S.C. § 502(b), determining the amount of the claim "as of the date of the filing of the petition," is explained very simply: "This requirement coincides with other Code sections that make it clear that section 502 applies to a proof of claim only if it reflects a prepetition claim. . . . Accordingly, a proof of claim should contain only claims as of the petition date. . . ." *Id.* Contrary to U.S. Bank's assertions, we do not believe Congress used code in § 502(b) to require discounting to present value where a far more simple meaning to the section accords with general principles of bankruptcy law.

[11] We note that finding a statute does not clearly and unambiguously order action X does not necessarily lead to the conclusion that action X is inappropriate – merely that further inquiry into other sources is needed.

out; therefore we must look at the interplay between the subsection at issue here, § 502(b)(2), and § 502(b) as a whole.

C. 11 U.S.C. § 502(b)(2)

The Bankruptcy Court treated the two facets of its ruling as separate and distinct – (1) post-petition interest was disallowed under 11 U.S.C. § 502(b)(2), and then (2) the claims (now consisting only of principal)[12] were discounted to present value, presumably under the direction of § 502(b). JP Morgan argues that the two cannot be separated. We agree. Once the Bankruptcy Court disallowed post-petition interest pursuant to § 502(b)(2), the legislative history of the provision, the economic reality of the transaction, and fundamental tenets of bankruptcy law do not permit further discounting of the principal.

By its terms, 11 U.S.C. § 502(b)(2) applies only to claims involving interest in addition to principal. A note providing for payments of principal-*plus* interest is fundamentally more valuable than a note involving the same principal payments, but *no* interest. A buyer of a note that includes interest surely knows he is bargaining for a more valuable instrument, as does the seller. Contrary to the District Court's assertion, then, "the distinction between interest-bearing claims and non-interest-bearing claims" is highly significant. U.S. Bank could not cite this Court to a

[12] U.S. Bank did not object to the portion of JP Morgan's claims attributable to pre-petition interest, and as that portion of the claims arose in full before the petition date, the Bankruptcy Court did not discount it in any way. For this portion of our analysis, therefore, we will refer to JP Morgan's claims as involving solely post-petition interest and principal coming due after the petition date.

single case from any court that applied discounting to an *interest*-bearing instrument after the post-petition interest had been disallowed under § 502(b)(2).[13]

11 U.S.C. § 502(b)(2) disallows, according to its terms, any portion of a claim attributable to "unmatured interest." We will set out the applicable portion of the legislative history for the Bankruptcy Act of 1978:

> "A proof of claim or interest is prima facie evidence of the claim or interest. Thus it is allowed under subsection (a) unless a party in interest objects. The Rules and case law will determine who is a party in interest for purposes of objection to allowance. . . .
>
> Subsection (b) prescribes the grounds on which a claim may be disallowed. The court will apply these standards if there is an objection to a proof of claim. The burden of proof on the issue of allowance is left to the Rules of Bankruptcy Procedure. . . .

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[13] Instead, U.S. Bank cited myriad cases that discounted to present value *non-interest*-bearing claims. *See, e.g., In re Trace Int'l Holdings, Inc.*, 284 B.R. 32 (Bankr.S.D.N.Y.2002) (deferred compensation without interest); *In re O.P.M. Leasing Servs., Inc.*, 79 B.R. 161 (S.D.N.Y.1987) (non-interest-bearing lease); *In re CSC Indus., Inc.*, 232 F.3d 505 (6th Cir.2000) (non-interest-bearing unfunded benefit liability of debtor to Pension Benefit Guaranty Corp.); *In re CF & I Fabricators of Utah, Inc.*, 150 F.3d 1293 (10th Cir.1998) (same). We acknowledge that several of these courts made sweeping statements declaring 11 U.S.C. § 502(b) to require discounting all claims to present value. However, these courts either conducted no inquiry at all into the issue, or concluded (contrary to our holding above) that § 502(b) was clear and unambiguous. Also, because the courts addressed only non-interest-bearing claims, any statements impacting § 502(b)(2)'s effect on discounting would be dicta.

> Paragraph (2) requires disallowance to the extent that the claim is for unmatured interest as of the date of the petition. Whether interest is matured or unmatured on the date of bankruptcy is to be determined without reference to any ipso facto or bankruptcy clause in the agreement creating the claim. Interest disallowed under this paragraph includes postpetition interest that is not yet due and payable, and any portion of prepaid interest that represents an original discounting of the claim, yet that would not have been earned on the date of bankruptcy. . . .[14]
>
> Section 502(b) thus contains two principles of present law. First, interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph. Second, *bankruptcy operates as the acceleration of the principal amount of all claims* against the debtor. One unarticulated reason for this is that *the discounting factor for claims* after the commencement of the case *is equivalent to [the] contractual interest rate on the claim.* Thus, this paragraph *does not cause disallowance of claims that have not been discounted to a present value because of the irrebutable* [sic] *presumption that the discounting rate and the contractual interest rate (even a zero interest rate) are equivalent.*"

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[14] This portion of the legislative history, and the omitted portion that follows, refers to original issue discounting ("OID"), discussed above *supra* note 7, but not at issue in this appeal. We therefore do not accept the dissent's attempt to lessen the weight of the legislative history by claiming it does not address the impact of OID. *Dis. Op.* at 10-11. The snippet of legislative history quoted by the dissent does not, it is true, mention OID – simply because OID is addressed by the previous paragraph, which the dissent does not quote.

H.R.Rep. No. 95-595, at 352-54 (1977) (emphases added); *see also* S.Rep. No. 95-989, at 62-65 (1978) (same).

We make several observations regarding this legislative history. To the extent that the Code in any way contemplates discounting to present value, such discounting is *not permitted* where the claim is for principal plus interest, and the interest has already been disallowed pursuant to § 502(b)(2).

As a matter of economics, the legislative history recognizes that it is irrelevant whether a court applies § 502(b)(2) to disallow unmatured interest, or discounts the *entire amount* (i.e., principal plus interest) to present value – as long as the court performs only *one* such operation and not both, the result is the same.[15] "Although potentially complex, present value can be simplified if a deferred promise to pay bears a market rate of interest; after the math is done, such a note will have a present value equal to its face amount." 7-1129 COLLIER ON BANKRUPTCY ¶ 1129.03.

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[15] We understand our dissenting colleague's observation that contractual interest often encompasses not only a discounting rate, which accounts for the time value of money, but also compensation for the risk of debtor default. *Dis. Op.* at 11-13. For the purpose of the case at bar, however, this "extra" interest factor is irrelevant, as the dissent implicitly recognizes. *See Dis. Op.* at 27 (noting that once the Bankruptcy Court had disallowed post-petition interest pursuant to § 502(b)(2), "it effectively performed not just a discounting operation, but also an operation to eliminate a hypothetical interest rate premium"). The latter interest rate premium reduction was not appealed by JP Morgan. *See supra* note 5. For our purposes today, then, that a discounting operation was performed at all during the disallowance of interest under § 502(b)(2) means that a *second* discounting under § 502(b) is unwarranted.

A (relatively) simple mathematical example shows the equivalence of the two methods. A $1,000 face value note bears an interest rate of 5%, and pays out annually over 10 years. At the end of the 10 years, the buyer/creditor would have received $1,628.89 in principal and interest (i.e., the note's "future value"). Assuming that the seller/debtor filed for bankruptcy on the day of issuance, however, disallowing all post-petition interest pursuant to § 502(b)(2) would yield a principal claim for $1,000. Similarly, discounting the entire claim ($1,628.89) to present value using the contractual rate of interest (5%) *also* yields a claim for $1,000.[16] By contrast, the Bankruptcy Court's approach below (*both* disallowing interest and then discounting to present value) yields a claim for only $613.91.

The point is to recognize what the creditor bargained for, while avoiding a windfall. The key difference between interest- and non-interest-bearing debt is in that bargain – the holder of a *non-interest*-bearing note bargained to receive only his $1,000, spread out over the 10 years. The holder of *interest*-bearing debt, however, bargained for much more than the $1,000-$1,628.89, in fact. Giving him $1,000 today, then, means that by the end of what would have been the note's 10-year lifetime, he could have reinvested at the same theoretical rate of interest, and earned his $1,628.89. A creditor who bargained to receive

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[16] One of the cases cited by U.S. Bank, *In re O.P.M. Leasing Services, Inc.*, 79 B.R. 161 (S.D.N.Y.1987), actually *supports* JP Morgan's argument that disallowing postpetition interest *and* discounting principal to present value is impermissible and inequitable "double discounting." The *O.P.M.* court rationalized discounting a non-interest-bearing lease to present value because it would accomplish the same economic function as disallowing post-petition interest under 11 U.S.C. § 502(b)(2). *Id.* at 167.

only the $1,000 in principal, without interest, would be fully compensated by $613.91, which he would be able to grow into his $1,000 by the end of the 10 years; not so for the creditor who bargained to receive interest, who is shortchanged by only receiving $613.91.

We emphasize that our holding in this case in no way yields a windfall for creditors such as JP Morgan. Instead, the interplay between § 502(b) and § 502(b)(2), as reflected in both the legislative history and basic economics, acknowledges that once unmatured interest has been disallowed, discounting the remainder of the claim to present value would inequitably twice penalize the creditor for the time value of money. We wholeheartedly agree that future liabilities must be reduced in some way to reflect the time value of money, but doing so twice is the "double discounting" complained of by JP Morgan in this case.

We acknowledge, but reject, U.S. Bank and the District Court's near-total, but misplaced. reliance on *In re: Loewen Group International, Inc.*, 274 B.R. 427 (Bankr.D.Del.2002) ("*Loewen*"). *Loewen,* a Bankruptcy Court case, dealt only with non-interest-bearing instruments, and concluded that they should be discounted to present value. We reject, as detailed above, the *Loewen* court's baseline conclusion that 11 U.S.C. § 502(b) is clear and unambiguous. We decline to follow the approach of *Loewen*.[17]

[17] *Loewen* is, of course, not binding on this Court or the District Court. At issue in *Loewen* were "long-term, non-interest bearing, unsecured promissory notes" and non-interest-bearing debt obligations. *Loewen,* 274 B.R. at 429. Contrary to U.S. Bank and the District Court's assertions, the instruments in *Loewen* were *non*-interest bearing – a distinction repeated frequently by the *Loewen* court itself. *See, e.g., Loewen,* 274 B.R. at 430-31 (detailing the installment payment structures as all

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As appealing as it is, we must also reject our dissenting colleague's theory that the reason interest-bearing debt would not be discounted to present value is because future principal is accelerated (once post-petition interest is disallowed under § 502(b)(2)), and becomes presently due debt. *Dis. Op.* at 7.[18] We note that this approach might

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being "without interest"); *id.* at 435 ("claims asserted in respect to non-interest bearing promissory notes"); *id.* at 440 ("[P]art of the parties' economic agreement was that Claimants would receive regular payments over time without interest."); *id.* at 442 n.31 ("The Promissory Notes giving rise to the Claims are non-interest bearing."). The only "interest" mentioned by *Loewen* was interest triggered in the event of default. *Id.* at 429 n.4. The instrument holders did not bargain to receive principal plus interest on the notes. *Id.* at 440.

The *Loewen* court determined that 11 U.S.C. § 502(b) "clear[ly] and unambiguous[ly]" required discounting to present value, *id.* at 433, a contention we have already rejected above. Crucially, however, while the District Court believed differently, even the *Loewen* court understood that interest-bearing obligations should be treated dissimilarly from *non*-interest bearing obligations. *Loewen* refused to consider the legislative history to § 502(b)(2), which we have cited above, in part because it related *only* to § 502(b)(2) and "§ 502(b)(2) is not at issue in this dispute." *Id.* at 433 n.15. We also note that *Loewen* understood the crucial economic distinction, concluding that it was economically appropriate to discount the non-interest-bearing claims because the parties had bargained to receive less than the face value of the notes by not building interest into the bargain. *Id.* at 440. Here, in contrast, the parties bargained to receive interest.

[18] Our dissenting colleague asserts that courts have "traditionally" followed this approach and simply accelerated post-petition principal instead of discounting it to present value in § 502(b)(2) situations. *Dis. Op.* at 5, 13. The three bankruptcy cases found by the dissent have indeed correctly not discounted principal to present value, but as the dissent notes, these courts "have not specified that they were not discounting the principal payments to present value." *Dis. Op.* at 5 n.1. We, unlike those bankruptcy courts, do not have the luxury of this approach, and instead bear the burden of reaching this otherwise correct result by reasoning based on the statutory text and legislative history.

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not lead to the limited result the dissent assumes, if we essay a glance at the *rest* of § 502(b), and not merely at § 502(b)(2). The general rule of both the Bankruptcy Code and § 502(b), as our colleague notes correctly, *Dis. Op.* at 5, 13, is acceleration to the date of filing of the bankruptcy petition, for the purpose of filing a claim – not the *lack* of acceleration.[19] Section 502(b) in particular illustrates this

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Moreover, the bulk of cases cited in the dissent simply do not stand for the proposition asserted. Most importantly, the cases dealt *only* with the ability of a creditor to forcibly accelerate a debt for purposes *other* than determining an allowable claim under § 502(b). In one of the first cases cited, the Bankruptcy Court never once mentioned the concept of discounting a claim to present value under § 502(b), and in fact *rejected* the contention that the debt there was accelerated for the purpose of an usurious interest-spreading analysis. *In re: Auto Int'l Refrigeration*, 275 B.R. 789, 812-14 (Bankr.N.D.Tex.2002), *rev'd in part sub nom. Mims v. Fid. Funding, Inc.*, 307 B.R. 849 (N.D.Tex.2002). We note that in this sense, *Auto Int'l Refrigeration* buttresses our above conclusion, *supra* Part III.B.1, that § 502(b) does not clearly and unambiguously mandate across-the-board discounting to present value.

Another case cited by the dissent, *In re: Payless Cashways, Inc.*, 287 B.R. 482 (Bankr.W.D.Mo.2002), relied on a later-reversed portion of *Auto Int'l Refrigeration* to find that the creditor could not collect a higher rate of interest on debt that had not been affirmatively accelerated. *Payless Cashways* addressed only 11 U.S.C. § 506, and never even mentioned § 502(b)(2), let alone any possibility of discounting to present value. The final case cited, *In re: Manville Forest Prods. Corp.*, 43 B.R. 293, 297-98 (Bankr.S.D.N.Y.1984), *rev'd on other grounds*, 60 B.R. 403 (S.D.N.Y.1986), simply concluded that the debt at issue was accelerated by the filing of a bankruptcy petition, so that no overt acts were needed of the creditor. The *Manville* court was not asked to determine the allowable amount of any claim, but instead to determine whether debt was accelerated before being deaccelerated. Contrary to the dissent's assertions, then, none of these cited cases made even a passing inquiry into the subject we today address, or concluded that discounting was inappropriate.

[19] The legislative history shows that § 502(b) and (b)(2) reflect the basic bankruptcy law tenet that "bankruptcy operates as the acceleration of the principal amount of all claims against the debtor." H.R.Rep. No. 95-595, at 352-54. "Simply stated, the filing of a petition accelerates

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point – subsections (6) and (7) specify claims determined "*without* acceleration," (emphasis added). The default state of all "amounts" under § 502(b) subsections *other* than subsections (6) and (7), then, is acceleration. Under our colleague's approach, all of these "amounts" would be accelerated and presently due, therefore none would be discounted to present value pursuant to § 502(b). What our colleague describes as a "special rule created by § 502(b)(2)," *Dis. Op.* at 19, would instead swallow the general rule, and any discounting language the dissent finds in § 502(b) would become mere surplusage.

We conclude that the language used in § 502(b) does not clearly and unambiguously require discounting an interest-bearing obligation to present value in light of the words' plain meanings and the language used elsewhere in the Bankruptcy Code. The Bankruptcy Court erred: Interest-bearing debt should not be discounted to present value after unmatured interest has been disallowed pursuant to § 502(b)(2).

IV. CONCLUSION

We conclude that the Bankruptcy Court erred in holding, and the District Court erred in affirming, that JP Morgan's claims should be discounted to present value even after the portion of the claims for post-petition interest was disallowed. Accordingly, we will reverse.

SMITH, *Circuit Judge*, dissenting.

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the principal amount of all unmatured claims against the debtor, *whether or not* a clause in a prepetition agreement provides that a bankruptcy filing accelerates the maturity date." 4-502 COLLIER ON BANKRUPTCY ¶ 502.03 (emphasis added).

The majority's reasoning today unnecessarily casts doubt on a long-standing, broadly-recognized, and well-justified principle arising under the Bankruptcy Code: that in order to avoid a windfall for certain creditors, claims based on future obligations should be discounted to present value before those obligations become eligible for immediate distribution. Further, the majority's holding rests on a mischaracterization of the disputed claims: the majority treats the claims as equivalent to principal and interest payments on a loan, when in fact the securitization and guarantee process in this case gave rise to claims that were based on non-interest-bearing future obligations. I respectfully dissent.

In adopting their characterization of the disputed claims, the majority repeats an error committed by both the Bankruptcy Court and the District Court. This mischaracterization of the disputed claims in turn led those courts to erroneously disallow the B-2 Certificate holders' claims to the extent that they were for Oakwood Homes' guarantees of payment for the stipulated shortfalls in the Interest Distribution Amounts. JP Morgan, however, failed to raise this issue on appeal, and therefore there is no opportunity to correct that error.

Because I believe that the Bankruptcy Court and the District Court did not otherwise err in holding that the B-2 Certificate holders' claims should be discounted to present value, the issues actually raised on appeal do not require reversing the District Court's judgment. Accordingly, I would affirm.

I.

The general purpose of bankruptcy is to "administer an estate as to bring about a ratable distribution of assets among the bankrupt's creditors." *Vanston Bondholders Protective Comm. v. Green,* 329 U.S. 156, 161 (1946). Section 502 of the Bankruptcy Code carries out this purpose through a two-step process. Section 502(a) provides that a creditor's claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). If a party in interest objects to a claim, however, "the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount." 11 U.S.C. § 502(b). Section 502(b) also specifies several exceptions to this general rule, most relevantly that the court shall not allow a claim "to the extent that . . . such claim is for unmatured interest." 11 U.S.C. § 502(b)(2). Traditionally, courts have collectively construed § 502(b) and § 502(b)(2) as creating two distinct tracks for analyzing claims based on future obligations: a general track for claims based on non-interest-bearing future obligations, and a special track for claims based on interest-bearing loan obligations.

A.

When other courts have applied the general rule in § 502(b) to claims based on future obligations, they have discounted such claims to present value. *See In re CSC Indus., Inc.,* 232 F.3d 505, 508 (6th Cir.2001) (holding in a case involving unfunded benefit liabilities under ERISA that "the bankruptcy court must value present claims and reduce claims for future payment to present value"); *In re*

CF & I Fabricators of Utah, Inc., 150 F.3d 1293, 1300 (10th Cir.1998) (same); *In re O.P.M. Leasing Servs, Inc.*, 79 B.R. 161 (S.D.N.Y.1987) (discounting scheduled reimbursement due under lease); *In re Loewen Group Int'l*, 274 B.R. 427, 432-41 (Bankr.D.Del.2002) (discounting future payments owed on a non-interest-bearing promissory note); *In re Trace Int'l Holdings, Inc.*, 284 B.R. 32, 38 (Bankr.S.D.N.Y.2002) (discounting deferred compensation claim). The basic purpose of this discounting practice is to "insure the relative equality of payment between claims that mature in the future and claims that can be paid on the date of bankruptcy." *In re CF & I*, 150 F.3d at 1300; *see also In re Trace*, 284 B.R. at 38 ("Discounting is consistent with the fundamental goal of treating similar claims in the same manner . . . and reflects the economic reality that a sum of money received today is worth more than the same amount received tomorrow. . . . Paying the face amount on an accelerated basis would overcompensate the creditor by enabling him to receive and use the money sooner.").

The courts have properly found the necessary textual support for this discounting practice in the general requirement of § 502(b) that the court "shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount." *See In re CSC*, 232 F.3d at 508; *In re CF & I*, 150 F.3d at 1300; *In re O.P.M.*, 79 B.R. at 165; *In re Trace*, 284 B.R. at 38-39. As the *Trace* Court explained, the "amount of the claim may and often does vary from the *allowed* amount of the claim, the portion eligible for distribution." 284 B.R. at 39 (emphasis in original); *see also In re Johns*, 37 F.3d 1021, 1023 n.1 (3d Cir.1994) ("An 'allowed' claim is one that will serve as the basis for distribution."). Pursuant to the general

instruction in § 502(b), this allowed amount is determined by the value of the claim in United States currency as of the petition date, which requires discounting what were originally future payments to present value. *See In re Trace,* 284 B.R. at 39; *see also In re O.P.M.,* 79 B.R. at 184 ("[A] determination of the amount of such claim cannot be distinguished from a determination of the value of the claim as of the petition date because any valuation of a claim is necessarily embodied in § 502(b) so that the amount of the claim to be allowed is properly ascertained.") (internal quotations and citations omitted).

In short, because payments that were originally due in the future will become eligible for immediate distribution through the bankruptcy process, in order to avoid overcompensating such creditors, the allowed amount of such claims should be determined by discounting the future payments to present value. And the general instruction in § 502(b) provides the necessary textual support for this practice by requiring the court to "determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition."

B.

When the contested claim is based on an interest-bearing loan obligation, however, the courts have disallowed the remaining post-petition unmatured interest payments in accordance with § 502(b)(2), but have not discounted the remaining principal payments to present value. *See, e.g., In re Wyeth Co.,* 134 B.R. 920, 922 (Bankr.W.D.Mo.1991); *see also In re Issaac,* 2005 WL 3939840 at *3 (Bankr.N.D.Ill. Aug. 25, 2005) ("Claims are 'allowed' 'as of the date of the filing of the petition' and

may not include interest that is unmatured as of the petition date. 11 U.S.C. § 502(b)(2). Thus, a loan claim is fixed as of the filing date and includes all principal that will ever become due and interest due only on the filing date.").[20] As one court explained, § 502(b)(2) has been interpreted as accelerating the principal portion of a loan claim:

> Section 502(b)(2) of the Bankruptcy Code, 11 U.S.C. § 502(b)(2), authorizes a creditor to accelerate a claim, to prove the full amount of an indebtedness, including the unmatured portion thereof. Even though only one payment may be due on a note when bankruptcy intervenes and the remaining payments may not become due until well into the future, the creditor is allowed to prove a claim for the entire balance due on the note, plus interest to the date of bankruptcy.

In re Lynch, 187 B.R. 536, 548 (Bankr.E.D.Ky.1995); *see also In re Payless Cashways, Inc.,* 287 B.R. 482, 488 (Bankr.W.D.Mo.2002) ("[T]he legislative history to section 502(b) states that bankruptcy acts as an acceleration of the principal amount of all claims against the debtor."); *In re Auto Int'l Refrigeration,* 275 B.R. 789, 813 (Bankr.N.D.Tex.2002) ("[B]ankruptcy may accelerate the Loan, however, this acceleration is only for the limited purpose of calculating Defendants' claim in the bankruptcy."); *In re PCH Assocs.,* 122 B.R. 181, 198 (Bankr.S.D.N.Y.1990) ("The Note may be

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[20] Although courts typically have not specified that they were not discounting the principal payments to present value, U.S. Bank was not able to identify any other case in which a court disallowed regularly-scheduled interest payments on a loan obligation pursuant to § 502(b)(2) and then discounted the remaining principal payments to present value.

deemed to have been accelerated . . . for the purposes of calculation of the [creditor's] claim in these bankruptcy proceedings."); *In re Manville Forest Products Corp.*, 43 B.R. 293, 297 (Bankr.S.D.N.Y.1984) ("It is a basic tenet of the Bankruptcy Code that '[b]ankruptcy operates as an acceleration of the principal amount of all claims against the debtor.'") (citations omitted).

Accordingly, the practice of allowing an interest-bearing claim subject to § 502(b)(2) without discounting the remaining principal payments to present value does not require an exemption for § 502(b)(2) cases from the discounting rule authorized by the general instruction in § 502(b). Rather, once the remaining principal payments have been accelerated, they have become presently due. Consequently, the general discounting rule authorized by § 502(b) requires no further discounting of the remaining principal payments, because those payment [sic] are no longer due in the future.

This treatment of loan cases subject to § 502(b)(2) is supported by the legislative history of § 502(b)(2), which provides:

> Subsection (b) prescribes the grounds on which a claim may be disallowed. The court will apply these standards if there is an objection to a proof of claim.
>
> . . .
>
> Paragraph (2) requires disallowance to the extent that the claim is for unmatured interest as of the date of the petition. Whether interest is matured or unmatured on the date of bankruptcy is to be determined without reference to any ipso

> facto or bankruptcy clause in the agreement creating the claim. Interest disallowed under this paragraph includes postpetition interest that is not yet due and payable, and any portion of prepaid interest that represents an original discounting of the claim, yet that would not have been earned on the date of bankruptcy. . . .
>
> Section 502(b) thus contains two principles of present law. First, interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph. Second, bankruptcy operates as the acceleration of the principal amount of all claims against the debtor. One unarticulated reason for this is that the discounting factor for claims after the commencement of the case is equivalent to the contractual interest rate on the claim. Thus, this paragraph does not cause the disallowance of claims that have not been discounted to a present value because of the irrebuttable presumption that the discounting rate and the contractual interest rate (even a zero interest rate) are equivalent.

H.R.Rep. No. 95-595, at 352-54 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6307-10; S.Rep. No. 95-989, at 62-65 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5848-51.[21]

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[21] The majority cites this legislative history for the proposition that "[t]he general rule of both the Bankruptcy Code and § 502(b) . . . is acceleration to the date of filing of the bankruptcy petition, for the purpose of filing a claim – not the *lack* of acceleration." Maj. Op. at 602 & n.19 (emphasis in original). I find persuasive, however, the reasoning of the *In re O.P.M.* Court, which concluded that because the passage in the legislative history cited by the majority "refers to the policy of disallowing claims pursuant to § 502(b)(2) for *unmatured interest* . . . it is evident, when read in context, that the cited paragraph deals with

(Continued on following page)

But this statement in the legislative history of § 502(b) is misleading for at least two reasons. First, the interest rate stated on the face of a debt instrument may be merely nominal, and the actual bargained-for interest rate may depend on other terms of the instrument. For

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that particular subsection of § 502(b)." *In re O.P.M.*, 56 B.R. at 686 n.4; *see also In re Loewen*, 274 B.R. at 433 n.15 ("[W]hen placed in its proper context, it is apparent that this snippet of legislative history specifically refers to the policy of disallowing claims for unmatured interest under § 502(b)(2). . . . Although . . . other courts have relied upon the legislative history of § 502(b) for guidance, those courts have done so in the process of explaining why claims for unmatured interest and/or original issue discount are disallowed pursuant to § 502(b)(2).") (citations omitted). This conclusion is further buttressed by the reference in this passage to accelerating "the principal amount" of a claim, a term that would ordinarily have meaning only if the claim in question was based on a loan obligation subject to the operation of § 502(b)(2).

Finally, I do not agree with the majority that § 502(b)(6) and § 502(b)(7) imply that "[t]he default state of all 'amounts' under § 502(b) subsections *other* than subsections (6) and (7), then, is acceleration." Maj. Op. at 27. Rather, § 502(b)(6) simply provides that "the claim of a lessor for damages resulting from the termination of a lease of real property" cannot exceed "the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease . . . [plus] any unpaid rent due under such lease, without acceleration. . . ." *See* § 502(b)(6). Accordingly, the reference to acceleration in § 502(b)(6) is required by the possibility that the termination of a lease would result in the acceleration of rent payments through the application of some damages rule or provision, not because § 502(b) itself contains a default acceleration rule. Similarly, § 502(b)(7) simply provides that "the claim of an employee for damages resulting from the termination of an employment contract" cannot exceed "the compensation provided by such contract, without acceleration, for one year . . . [plus] any unpaid compensation due under such contract, without acceleration. . . ." *See* § 502(b)(7). Again, as with § 502(b)(6), the reference to acceleration in § 502(b)(7) simply negates the possibility that a damages rule or provision would accelerate compensation in the event of a termination of an employment contract, and therefore this language in § 502(b)(7) does not imply that there is a default acceleration rule in § 502(b).

example, the courts have carved out an "original issue discount" rule to reflect the fact that a discount on the purchase price of a debt instrument – the amount actually tendered by the lender to the borrower – can reflect some portion of the interest to be paid on the loan. *See generally In re Pengo Indus., Inc.,* 962 F.2d 543 (5th Cir.1992); *In re Chateaugay Corp.,* 961 F.2d 378 (2d Cir.1992). An "original issue discount" occurs when the nominal interest rate on a debt instrument is set below the market interest rate for an instrument of that type, which results in a market purchase price for that instrument which is less than its face value. *See In re Pengo,* 962 F.2d at 546. The courts have treated this difference between the market purchase price and the face value of such instruments as "in the nature of additional interest," and consequently have considered any such unamortized original issue discounts as claims for unmatured interest within the meaning of § 502(b)(2). *See id.* Again, the courts justify this rule on the basis of the instructions in § 502(b) and § 502(b)(2) and in light of the "economic reality" of the underlying transaction. *See id.*

Another notable problem with this statement in the legislative history is that the interest rate on debt instruments typically will reflect not only a general discounting rate, but also other factors, most prominently the risk that the debtor will not fulfill his payment obligations as per the loan agreement. *See Till v. SCS Credit Corp.,* 541 U.S. 465, 474 (2004) (observing that an interest rate compensates a creditor for the fact that "[a] debtor's promise of future payments is worth less than an immediate payment of the same total amount because the creditor cannot use the money right away, inflation may cause the value of the dollar to decline before the debtor pays, and there is

always some risk of nonpayment."). In other words, typically there is a difference between the interest rate on a loan and the contemporaneous risk-free discounting rate, and this difference reflects in large part a premium that the lender has required the borrower to agree to pay in order to compensate the lender for the risk of nonpayment.[22]

Accordingly, the disallowance of claims to the extent that they are for unmatured interest payments pursuant to § 502(b)(2) carries out at least two distinct financial operations. First, to the extent that a portion of the interest rate reflects the time value of money, the rule in § 502(b)(2) does in fact carry out an operation equivalent to the discounting that the courts would otherwise have performed pursuant to the general instruction in § 502(b). Second, to the extent that a portion of the interest rate contains a premium that reflects the risk of nonpayment associated with the loan, the rule in § 502(b)(2) acts to disallow the lender's claim to the extent that it contains this premium. This second operation is economically justifiable precisely because this premium was conditional: the essence of the bargain struck by the lender was that the lender would receive this premium if the debtor made his payments as provided by the loan agreement, but that the lender would fail to receive this premium in the case of

[22] In that sense, lenders typically take out a series of "bets" on risky borrowers. If a given borrower makes the payments as per the loan agreement, the lender wins the bet on that borrower, and the lender's winnings take the form of the interest rate premium that has been paid by the borrower. Similarly, if a borrower fails to make the payments as per the loan agreement, the lender loses the bet. If a lender has properly assessed the risks associated with its various bets, the interest premiums realized in the cases where the lender wins these bets will compensate the lender for the lost payments in the cases where the lender loses these bets.

nonpayment. Accordingly, it is economically appropriate for the Bankruptcy Code to disallow claims to the extent that they contain such a premium, because the lender's expectation of receiving this premium was conditioned on payment of the loan as provided by the agreement.[23]

Consequently, I agree with the majority's conclusion that bankruptcy courts are not authorized by § 502(b)(2) to "double discount" claims. That is because the traditional construction of § 502(b)(2) authorizes Bankruptcy Courts to accelerate any remaining principal payments in cases governed by § 502(b)(2), and the discounting of future obligations authorized by the general instruction in § 502(b) is in fact already embedded as one of the operations carried out by the disallowance of unmatured interest pursuant to § 502(b)(2). But the rule in § 502(b)(2) is not simply equivalent to a discounting rule. Rather, in the course of disallowing unmatured interest payments, the rule in § 502(b)(2) also carries out additional operations, most notably the disallowance of any conditional interest rate premium associated with the risk of nonpayment.

[23] In other words, the rule in § 502(b)(2) in part reflects the fact that when the debtor enters bankruptcy, the lender has lost his bet on the debtor, and therefore the lender is not entitled to claim payment of the premium that he would have received if he had instead won his bet on the debtor. Indeed, to allow such a claim to the extent that it reflected this premium would be overcompensating the lender, because lenders typically receive their compensation for losing such bets from other loans, namely those in which the lenders made similar bets and actually won (in that the borrower made the scheduled payments, and the lender realized the associated interest rate premium).

II.

Although the majority nominally declines to reach whether § 502(b) ever permits discounting, the majority's reasoning does not appear to be limited to claims based on interest-bearing loan obligations treated under § 502(b)(2). Consequently, the majority's reasoning unnecessarily undermines the traditional and proper construction of the Bankruptcy Code.

The majority explicitly states that "[w]e do not hold here that 11 U.S.C. § 502(b) *never* authorizes discounting a claim to present value. . . ." Maj. Op. at 18-19 (emphasis in original). Nonetheless, such a conclusion appears to be the logical implication of the majority's reasoning.

For example, the majority states, "We are not convinced that a plain reading of § 502(b) supports the Bankruptcy Court's conclusion." Maj. Op. at 16. The majority distinguishes the term "amount" from the term "value,"[24] and argues that:

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[24] The majority defines "value" as "the monetary worth or price of something; the *amount* of goods, services, or money that something will command in an exchange." Maj. Op. at 16 n.8 (emphasis added) (citation omitted). The presence of the term "amount" in their definition of "value" severely undermines the majority's apparent conclusion that "amount" and "value" cannot refer to the same thing. Moreover, the full phrase that we are construing is "the amount of such claim in lawful currency of the United States as of the date of the filing of the petition." 11 U.S.C. § 502(b). Construing this full phrase as referring to the "value" of the claim is thus supported by the opinion's own definition of "value," because § 502(b) requires the court to determine "the amount of . . . money" (namely U.S. currency) which should be "exchanged" (immediately distributed by the estate to the creditor) as the result of allowing the claim.

> [W]here the Bankruptcy Code intends a court to discount something to present value, the Code clearly uses the term "value, as of" a certain date. Many sources support the use of the term "value" for this purpose, *none* support U.S. Bank's contention that "amount . . . as of" also implies a present value calculation.

Maj Op. at 16-17 (citations omitted) (emphasis in original). The majority concludes: "Where the Code speaks of discounting cash streams to present value, it speaks in terms of 'value, as of' a certain date. It does not use 'amount . . . as of.'" Maj. Op. at 18.[25] This textual argument is not limited by its terms to claims based on loan obligations.

Additionally, the majority "decline[s] to follow the approach" of the court in *Loewen,* noting that "*Loewen* is, of course, not binding on this Court or the District Court." Maj. Op. at 24 & n.17. The majority does state that *Loewen* is distinguishable because the promissory notes in that case were not interest-bearing. Maj. Op. at 24 n.17.

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[25] An alternative explanation for this variance is that § 502(b) does not always require discounting to present value, but rather simply authorizes it in certain circumstances. For example, to the extent that § 502(b)(2) provides an alternative mechanism for determining the allowed amount of claims based on interest-bearing loan obligations – namely, by disallowing the interest payments but accelerating the principal payments – § 502(b) would not require further discounting. *See* Part I.B, *supra*. More generally, § 502(b) would not require discounting if the claim was not based on a future obligation, but rather was based on a payment that was presently or past due. In short, the fact that § 502(b) generally contemplates many different types of claims, and that different methods for determining "the amount of such claim[s] in lawful currency of the United States as of the date of the filing of the petition" may apply to different claims, provides a sufficient explanation for why the general instruction of § 502(b) is not written so as to always require discounting.

But the majority further states, "The *Loewen* court determined that 11 U.S.C. § 502(b) 'clear[ly] and unambiguous[ly] required discounting to present value ... a contention we have already rejected above." *Id.* In light of the majority's broad reasoning with respect to the text of § 502(b), this sweeping statement also goes beyond the more limited principle that § 502(b) does require additional discounting in cases subject to the rule in § 502(b)(2).

Finally, the majority states that "[t]he general rule of both the Bankruptcy Code and § 502(b) ... is acceleration to the date of filing of the petition for the purpose of filing [sic] a claim, not the *lack* of acceleration." Maj. Op. at 26 (emphasis in original). If that was in fact a proper construction of § 502(b) in general, rather than merely § 502(b)(2) in particular, then logically no claims would be subject to discounting, because all claims would be presently due.

Collectively, these statements go farther than necessary if we are merely holding that "double discounting" is not allowed in cases that are subject to the rule in § 502(b)(2). And as the majority itself notes, insofar as the majority's reasoning does not appear to depend on the future obligations taking the form of interest-bearing loan obligations, the majority's reasoning places our court at odds with the reasoning of all of the other courts to address these issues. *See* Maj. Op. at 20 n.13.

In light of the basic purposes of the Bankruptcy Code and the general instruction in § 502(b), I would adopt today the traditional view that § 502(b) authorizes discounting claims based on future obligations to present value. I would also affirm the standard practice of not discounting the remaining principal payments in cases

subject to § 502(b)(2), because such discounting in effect has already occurred through one of the operations embedded in the rule in § 502(b)(2), and § 502(b)(2) implicitly operates to accelerate the remaining principal payments.[26]

III.

In light of this traditional construction of § 502(b) and § 502(b)(2), the courts must determine whether a claim for future payments should be treated under the general discounting rule, or rather under the special rule created by § 502(b)(2). In this case, a careful examination of the disputed claims indicates that the Bankruptcy Court and the District Court erred by treating these claims as interest-bearing loan obligations covered by the special rule in § 502(b)(2), and the majority today repeats this error by adopting the same characterization of the disputed claims.

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[26] Accordingly, I agree with the majority that an erroneous double discount has been applied to this claim. However, the mere fact that this double discounting is erroneous does not tell us which of the two discounts was the erroneous discount. In my view, the erroneous discount resulted from the application of § 502(b)(2) to this claim, when in fact no part of the claim was actually for unmatured interest within the meaning of § 502(b)(2). *See* Part IV, *infra*. In contrast, discounting this claim to present value was not erroneous, because it was based on payments that would not have occurred until the future if not for the claim becoming immediately payable due to the bankruptcy. *See* Part I.A, *supra*. Both of these conclusions – that no part of the claim was for disallowable unmatured interest, but that the entire claim should be discounted to present value – are derived from my analysis of the nature of the financial instrument that gave rise to the claim. *See* Part III, *infra*. But as described in Part V, *infra*, we cannot correct the error which led to double discounting in this case because the claimants failed to appeal the erroneous discount, and only appealed the nonerroneous discount. So, despite the fact that an erroneous double discount was applied to this claim, I would hold that we have no opportunity to correct that error, given the nature of this appeal.

The manifest purpose of the securitization and guarantee process in this case was to convert the original mortgage loans into a substantially different form of financial instrument. The terms of the Pooling and Service Agreements make it clear that rather than loaning funds to the Trusts, the certificate holders were instead purchasing a right to be paid from the trust's assets according to the specified schedules.[27] Indeed, the Agreements described the payments due to the certificate-holders as "Principal Distribution Amounts" and "Interest Distribution Amounts." These terms imply that the Trusts were not making principal and interest payments on loans granted to the Trusts by the certificate holders. Rather, these terms imply that the Trusts were instead distributing payments derived from the Trusts' revenues to the certificate holders. The fact that the Trusts' underlying revenue streams from the mortgages were divisible into principal and interest portions, and the fact that the scheduled distributions to the certificate holders reflected this underlying division, does not imply that the Trusts' payments to the certificate holders were themselves in the nature of principal and interest payments.

Further, once Oakwood Homes guaranteed the payments on the B-2 Certificates, the joint obligation of the

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[27] Notably, the "tranch" system adopted by the Trusts, which set a hierarchical priority system for distributing the available funds among the different classes of certificate holders, demonstrates that the Trusts were not simply holding specific sets of mortgages for the benefit of corresponding sets of certificate holders. Rather, the Trusts were indeed first "pooling" the revenues received from the mortgages, and then distributing funds from this general pool to the different certificate holders according to the schedules and priority system defined in the Pooling and Service Agreements.

Trusts and Oakwood Homes to make the scheduled payments was not conditioned on the Trusts receiving the necessary revenues from the mortgages held by the trust. The Limited Guarantee thus further distinguished the payments due to the B-2 Certificate holders from the underlying interest and principal payments owed to the Trusts. *Cf. In re Wisconsin Engine Co.,* 234 F. 281, 284 (7th Cir.1916) (holding that even though payments on promissory notes were "expressed in terms of royalties," they were not expressed as conditioned upon such royalties being earned, and thus were not royalty payments). In *Wisconsin Engine,* the creditor owned certain patents, and granted licenses for those patents to the debtor. *See id.* at 282-83. The license agreement provided for a royalty, but the license agreement also in effect securitized and guaranteed the royalty payments for the first three years. *Id.* The agreement provided for a minimum royalty payment of $22,500 for the first three years, and further provided that

> as evidence or prepayment of such sum the licensee will deliver to the licensor, at the time of signing this agreement, two sets of negotiable promissory notes of equal amounts for the aggregate sums of twenty-two thousand five hundred dollars ($22,500) . . . payable at the following times and in the following amounts: Five thousand dollars ($5,000) shall be payable at the end of one year from the date hereof; ten thousand dollars ($10,000) at the end of two years from the date hereof; and seven thousand five hundred ($7,500) at the end of three years from the date hereof.

Id. After the licensee entered bankruptcy, the Seventh Circuit allowed a claim on one of the two sets of these

promissory notes (a set of three notes for $2,500, $5,000, and $3,750 respectively), for a total of $10,537.51, their discounted value as of the time bankruptcy proceedings began. *Id.* at 282, 284.

The Seventh Circuit analyzed the relationship between the payments due on the promissory notes and the underlying royalty payments as follows:

> In our judgment, the indebtedness represented by the notes was the consideration for the grant of the exclusive license. It was expressed in terms of royalties, and properly so, because, in so far as royalties up to that amount would be earned under the agreement, payment of the notes would cancel any obligation in respect thereto. But it was not expressed as conditioned upon such royalties being earned. The parties contemplated the possible cancellation of the license before the expiration of three years because of licensee's breach of the agreement or its insolvency. Nevertheless the obligation to pay the $22,000 [sic] remained.
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> . . .
>
> There is no guaranty that, if royalties shall in fact become due, they shall amount to at least $22,500 for the period; there is an absolute undertaking that this amount shall be paid. . . . [T]he provision that notes should be given and that they should be negotiable is additional evidence tending to resolve any doubt as to the intention of the parties that the amount therein stated was to be payable in any event. That the notes were not in fact sold is of no moment. The parties necessarily contemplated that they might be negotiated.

Id. at 284. In short, the Seventh Circuit recognized that although the payment obligations were "expressed in terms of royalties," once those obligations had been converted into guaranteed and negotiable financial instruments, they should be treated as such by the Bankruptcy Code.

This same principle should apply in our case. Although payments distributed by the Trusts are "expressed in terms" of "Principal Distribution Amounts" and "Interest Distribution Amounts," in reality the B-2 Certificate holders were like the holders of the negotiable promissory notes in *In re Wisconsin Engine:* they were guaranteed a future set of payments, and the payments owed to the B-2 Certificate holders were not conditioned on the Trusts acquiring the revenue from the underlying mortgages and then distributing it to the certificate holders. Indeed, creating such a financial instrument was the manifest purpose of the securitization and guarantee process with respect to the B-2 Certificates.

In short, the B-2 Certificate holders' claims against Oakwood Homes were not for principal and interest due to them on a loan that they had made to Oakwood Homes. Indeed, these claims were not even for guarantees on a loan that the certificate holders had made to a third party, because the certificate holders did not in fact loan money to the Trusts. Rather, the certificate holders had a claim against Oakwood Homes that was equivalent to any other non-interest-bearing future obligation, even though a

portion of this obligation was expressed as a guarantee of payment for an "Interest Distribution Amount."[28]

IV.

Consequently, the Bankruptcy Court's error was not in discounting Oakwood Home's future guarantees of payment for the Principal Distribution Amounts to present value in accordance with the general instruction in § 502(b). Rather, the Bankruptcy Court's error was in applying the rule in § 502(b)(2) to this case and disallowing the B-2 Certificate holders' claims to the extent that they were for Oakwood Home's guarantees of payment on the Interest Distribution Amounts. That is because this portion of the B-2 Certificate holders' claims was not in fact for unmatured interest within the meaning of § 502(b)(2).

In light of the multiple operations embedded in the rule in § 502(b)(2), the consequences of this error were not inconsequential. Because the B-2 Certificate holders were not directly entitled to payments from some specific set of mortgages, they had not bargained for a risk premium in the form of higher mortgage interest rates. Indeed, the tranch system established by the Pooling and Service Agreements effectively transferred some of the risk associated with the

[28] In that sense, it should not be relevant that the securities in this case were partially backed by the revenue from the mortgages held by the Trusts, rather than the revenue from any other sort of asset that a trust could hold. As demonstrated by *Wisconsin Engine*, the securitization and guarantee process in this case could be applied to many different types of assets, and the application of the Bankruptcy Code to a guarantor's obligations in such cases should not depend on the nature of the underlying assets held by the Trusts.

possible nonpayment of the mortgages from the higher priority certificates to the lowest priority certificates – most notably to the B-2 Certificates – without any compensating increase in the Interest Distribution Amounts due to the B-2 Certificate holders.

The limited guarantee of payment supplied by Oakwood Homes to the B-2 Certificate holders was specifically intended to facilitate the sale of the B-2 Certificates by eliminating this concentrated risk. And because Oakwood Home's guarantee of the B-2 Certificate's scheduled payments was not in the form of a loan, nor even in the form of a guarantee on a loan, nowhere in this transaction did the B-2 Certificate holders bargain for any interest rate premium associated with the risk that Oakwood Homes itself would fail to make the payments required by the terms of the Limited Guarantee.[29]

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[29] In cases where a lender bargains for interest payments on a guaranteed loan, it may be reasonable to assume that the lender has bargained for an interest rate premium associated with the combined risk of the borrower and the guarantor jointly failing to make payments on the loan as per their agreements. Accordingly, if in such a case the borrower fails to make their payments and the guarantor petitions for bankruptcy, it may be economically justifiable to treat the guarantor's future obligations to the lender as if they were interest-bearing loan obligations within the meaning of § 502(b)(2). *See* Maj. Op. at 12 (concluding that Oakwood Homes, as the putative guarantor on a loan, should be treated as being in the "exact same position as the Trusts, the primary obligors, with respect to the obligation to make these principal and interest payments"). In other words, in such a case the lender presumably has again made a "bet" -- namely that either the borrower or the guarantor would make the payments as per their agreements – and the lender also presumably bargained for compensation for the possibility of losing this bet in the form of the possibility of realizing an interest rate premium in the event that the lender won this bet.

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When the Bankruptcy Court erroneously applied § 502(b)(2) to disallow the claims to the extent that they were for Oakwood Home's guarantees of payment on the Interest Distribution Amounts, it effectively performed not just a discounting operation, but also an operation to eliminate a hypothetical interest rate premium. But because the B-2 Certificate holders had not in fact bargained for and received such an interest rate premium, applying the rule in § 502(b)(2) to their claims unjustifiably reduced the allowed amount of their claims to the extent that it went beyond discounting their claims to present value.

We need not reach this issue today, however, because the B-2 Certificates were not in fact loans to the Trusts, and thus Oakwood Homes' guarantees of payment on the B-2 Certificates were not guarantees on loans, and the B-2 Certificate holders were not lenders who had bargained for an interest rate premium on a loan which would reflect in part the risk of Oakwood Homes' nonpayment on its guarantee. Indeed, these findings are confirmed by the simple fact that parties described by the majority as the "primary obligors" – the Trusts – will not in fact become insolvent as a result of the stipulated revenue shortfalls, and the B-2 Certificate holders will not have a claim against the Trusts for a default on their obligations under the Pooling and Service Agreements. Rather, the possibility of such a shortfall in revenues was expressly contemplated and provided for in the Pooling and Service Agreements, and the B-2 Certificate holders knowingly purchased low-priority certificates. Similarly, the B-2 Certificate holders will have no claim for direct payment from the purchasers who default on their mortgages, because they did not bargain for and receive the right to such direct payments. Accordingly, this is not a case in which a lender has a claim against both a borrower and guarantor who have failed to make payments, because the B-2 Certificate holders will have no such claim against either the Trusts or the underlying purchasers as a result of the stipulated shortfalls. Again, these facts simply confirm that due to the securitization process, the B-2 Certificate holders were not lenders, and Oakwood Homes did not provide the B-2 Certificate holders with a guarantee on a loan.

In other words, by erroneously applying § 502(b)(2) to this case, the Bankruptcy Court and the District Court treated the B-2 Certificate holders as having made a losing bet on Oakwood Homes making its payments as per the guarantee agreement. But because the B-2 Certificate holders had not bargained for an interest rate premium associated with that risk, they could not have won any such hypothetical bet in the event that Oakwood Homes fulfilled its agreement. Accordingly, this error by the Bankruptcy Court and the District Court had the effect of imposing on the B-2 Certificate holders the consequences of losing a bet, a bet that they did not in fact agree to make.[30]

V.

Due to the procedural posture of this case, however, it is not possible for us to remand the case to the District Court with an instruction to reverse the Bankruptcy Court's judgment to the extent that the Bankruptcy Court disallowed claims based on Oakwood Home's guarantees of payment on the Interest Distribution Amounts. That is because JP Morgan chose not to raise this portion of the Bankruptcy Court's judgment as an issue in this appeal,

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[30] The majority suggests that these considerations are "irrelevant" because the "interest rate premium reduction was not appealed by JP Morgan." Maj. Op. at 22 n.15. I agree that we cannot correct this error because JP Morgan failed to appeal this decision by the Bankruptcy Court and the District Court. *See* Part V, *infra*. Nonetheless, these considerations *are* relevant because they demonstrate the differences between the error which in fact occurred in this case (the unwarranted application of § 502(b)(2) to the claims) and the nonerroneous decision which the majority seeks to correct (the discounting of the claims to present value). In other words, these two possible errors are not interchangeable, and we should not treat them as such on appeal.

and instead appealed only the Bankruptcy Court's subsequent decision to discount the remainder of the B-2 Certificate holders' claims to present value.

Of course, in light of the traditional construction of § 502(b) and § 502(b)(2), U.S. Bank inconsistently argued below: (1) that the claims in this case should be treated as interest-bearing obligations for the purpose of disallowing what the parties have described as the interest portion of the claims pursuant to § 502(b)(2); and (2) that the claims should not be treated as interest-bearing obligations for the purpose of accelerating what the parties have described as the principal portion of the claims. Nonetheless, as a result of their errors, neither the Bankruptcy Court nor the District Court compelled U.S. Bank to choose between these inconsistent theories of the disputed claims. Accordingly, U.S. Bank remained free to argue on the basis of either theory of the disputed claims during this appeal.

Before us, U.S. Bank correctly argued that the future obligations in this case were not in the nature of loan payments and therefore should be discounted to present value. Accordingly, I would hold that we are bound to affirm the District Court's judgment on this appeal. That is because the Bankruptcy Court did not err with respect to the sole issue presented on appeal, and JP Morgan chose not to appeal the issue with respect to which the Bankruptcy Court did in fact err.[31]

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[31] The majority expresses "confusion" about this conclusion, observing that "the courts below determined that legally, it was permissible to discount a claim to present value *after* applying § 502(b)(2) to disallow any post-petition interest." Maj. Op. at 12 n.5. I agree that the Bankruptcy Court and the District Court erred by concluding that double discounting was permissible under § 502(b)(2)

(Continued on following page)

VI.

In sum, to the extent that the majority's reasoning implies that discounting non-interest-bearing future obligations to present value is contrary to the text of the Bankruptcy Code, I believe that it unnecessarily and unjustifiably undermines the traditional construction of § 502(b). Further, in my view the majority has repeated the error of the Bankruptcy Court and the District Court by accepting JP Morgan's position on appeal that Oakwood Homes' guarantees of payment to the B-2 Certificate holders should be treated as if they were principal and interest payments. In a world of increasingly complex

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and § 502(b). *See* Note 7, *supra*. Nonetheless, the mere fact that the Bankruptcy Court and the District Court erred in their legal reasoning does not mean that we should reverse the result. *See Helvering v. Gowran*, 302 U.S. 238, 245 (1937) ("In the review of judicial proceedings the rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason."); *Brumfield v. Sanders*, 232 F.3d 376, 379 n.2 (3d Cir.2000) ("'An appellate court may affirm a result reached by the District Court on different reasons, as long as the record supports the judgement.'") (citation omitted). Here, the record supports a determination that the claims in question were not for principal and interest within the meaning of § 502(b)(2), and therefore that the claims were properly discounted to present value. *See* Part III, *supra*. Accordingly, the fact that the Bankruptcy Court and District Court reached the same conclusion after first determining that the claims in question *were* for principal and interest within the meaning of § 502(b)(2) merely means that they reached the right conclusion after engaging in erroneous reasoning. In contrast, their other conclusion – that the claims should be disallowed to the extent that they were for the guarantees of the Interest Distribution Amounts – was not supported by the record, and I would not have affirmed that decision on appeal. *See* Part IV, *supra*. But that decision has not been appealed, and therefore we are left considering only a conclusion that is supported by the record, albeit not by the erroneous reasoning of the Bankruptcy Court and the District Court.

financial instruments, it is vital for the courts to recognize that a series of agreements can transform what was originally a loan into a very different financial vehicle – and indeed that effecting such a transformation can be one of the very purposes of such agreements. The courts in turn should apply the Bankruptcy Code, including § 502(b) and § 502(b)(2), in light of the actual economic bargains defined by such financial instruments. Only then can the courts carry out one of the core purposes of the Bankruptcy Code – to reliably and fairly distribute the bankrupt's assets among its creditors.

For the reasons stated above, I respectfully dissent.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	: Chapter 11
OAKWOOD HOMES CORP. et al.,	: Bankruptcy No. 02-13396 PJW
Debtors.	: Civil Action No. 04-835 JJF
JPMORGAN CHASE BANK, Trustee,	: (Filed Feb. 17, 2005)
Appellant,	:
v.	:
U.S. BANK NATIONAL ASSOCIATION,	:
Appellee.	:

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MEMORANDUM OPINION

February 17, 2005
Wilmington, Delaware

/s/ Joseph J. Farnan J.
Farnan, District Judge.

Presently before the Court is an appeal by JPMorgan Chase Bank, in its capacity as successor trustee on behalf of some of the holders of certain Class B-2 Certificates, from the May 6, 2004, orders (Claims Orders) of the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court"). The Claims Orders granted, in part, and denied, in part, the objections of Appellee U.S. Bank National Association, as Trustee, to the proofs of claim filed by JPMorgan. For the reasons set forth below, the decision of the Bankruptcy Court will be affirmed.

I. Background

Debtor Oakwood Homes Corporation ("Oakwood") designs, builds, and sells manufactured modular homes. To raise capital for its financing activities, Oakwood formed non-debtor Real Estate Mortgage Investment Conduits trusts ("REMIC Trusts") to issue Class B-2 Certificates. Such certificates entitled their holders ("B-2

Holders") to periodic payments of principal and interest over a period of time. Oakwood guaranteed any shortfalls in the REMIC Trusts' payment on the B-2 Certificates.

On November 15, 2003 [sic], Oakwood filed for chapter 11 bankruptcy. Appellant JPMorgan Chase Bank ("JPMorgan"), as successor trustee on behalf of some of the holders of the B-2 Holders, filed proofs of claim seeking payment of past and future shortfalls of principal and interest on the B-2 Certificates (the "Limited Guarantee Claims"). On October 10, 2003, and November 21, 2003, Appellee U.S. Bank National Association ("U.S. Bank"), as successor indenture trustee for holders of certain senior notes issued by Oakwood, filed objections to the Limited Guarantee Claims.

On May 6, 2004, the Bankruptcy Court entered orders ("the Claims Orders) granting, in part, and denying, in part, U.S. Bank's objections to the JPMorgan's Limited Guarantee Claims. (D.I. 20, Ex. A.) In relevant part, the Bankruptcy Court held that (1) "the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date" and (2) "Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date." *(Id.,* at 3, 4.) JPMorgan appeals from the Claims Orders of the Bankruptcy Court.

II. Parties' Contentions

JPMorgan contends that the Bankruptcy Court erred in its interpretation of section 502(b). Specifically, JPMorgan

contends that, presuming 502(b)(2) excludes post-petition interest, 502(b) does not require that the interest-bearing principal of an unmatured claim be discounted to the present value as of the petition date. JPMorgan contends that to construe 502(b) to exclude both would be "double-discounting," which is "unlawful, inequitable, and commercially nonsensical," as well as contrary to a plain reading of the statute (D.I. 19 at 2, 16-17). In the alternative, JPMorgan contends that claim amount should include post-petition interest. JPMorgan argues that section 502(b)(2) is inapplicable because the Limited Guarantee Claims do not seek payment of interest on any debt of debtor Oakwood (D.I. 33).

In response, U.S. Bank contends that (1) the Bankruptcy Court accurately construed 502(b) and (2) any perceived hardship to the Class B-2 Certificate holders is a function of the B-2 Certificates, not the Bankruptcy Code.

III. Standard of Review

The Court has jurisdiction to hear an appeal from the Bankruptcy Court pursuant to 28 U.S.C. § 158(a). In undertaking a review of the issues on appeal, the Court applies a clearly erroneous standard to the Bankruptcy Court's findings of fact and a plenary standard to its legal conclusions. *See Am. Flint Glass Workers Union v. Anchor Resolution Corp.*, 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the Court must accept the Bankruptcy Court's finding of "historical or narrative facts unless clearly erroneous, but exercise[s] 'plenary review of the trial court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" *Mellon Bank, N.A. v. Metro Communications, Inc.*,

945 F.2d 635, 642 (3d Cir. 1991) (citing *Universal Mineral, Inc. v. C.A. Hughes & Co.*, 669 F.2d 98, 101-02 (3d Cir. 1981)). The appellate responsibilities of the Court are further understood by the jurisdiction exercised by the Third Circuit, which "conducts the same review of the Bankruptcy Court's order as . . . the District Court." *In re Telegroup*, 281 F.3d 133, 136 (3d Cir. 2002) (citing *In re O'Brien Envtl. Energy, Inc.*, 188 F.3d 116, 122 (3d Cir. 1999)).

IV. Discussion

Sections 502(b) and 502(b)(2) of the Bankruptcy Code state:

> (b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount except to the extent that – . . . (2) such claim is for unmatured interest . . .

"Interpretation of a statute must begin with the statute's language." *Mallard v. United States Dist. Court*, 490 U.S. 296, 300 (1989). "[W]here . . . the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *United States v. Ron Pair Enters.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

In this appeal, the Court concludes that a plain reading of section 502(b) supports the Bankruptcy Court's decision. According to the language of the statute, section

502(b) requires that the Court both (1) "determine the amount of [the] claim . . . as of the date of the filing of the petition" and (2) exclude from the claim amount "unmatured interest." The Court concludes that section 502(b)'s language clearly and unambiguously required the Bankruptcy Court to both discount the instant claims to present value and exclude post-petition interest.

The Court further concludes that such a decision is not at odds with the overarching purposes of the Bankruptcy Code. The instruments in question, the B-2 Certificates, are certificates for future payments, not loans to the REMIC Trusts or the Debtor. The parties stipulated that no claim for any principal payment under the applicable B-2 Certificates arises before April 15, 2011. (D.I. 3 at Tab 18.) Because payment is not due until the future, the Bankruptcy Court discounted the claims to present value. Such discounting is based on the premise that money received today is more valuable than money received tomorrow. *See Matter of Penn Central Transp. Co.*, 596 F.2d 1102, 1116 (3d Cir. 1979). To determine the present value, the parties stipulated to the amount of principal shortfalls arising under the B-2 Certificates over time and the present value of the future principal shortfalls, discounted at a 7.74% rate, as of the petition date. (D.I. 3 at Tab 21 ¶ 2.) In effect, the parties stipulated that the REMIC Trusts are not liable for the full principal upon filing, and thus the full principal is not accelerated. Accordingly, the Court concludes that Oakwood, the guarantor of the REMIC Trusts, cannot be held liable for the full principal upon filing.

Finally, while the Bankruptcy Court did not articulate its rationale for its decision, the Court concludes that the previous decision of the Bankruptcy Court in *In re Loewen*

Group Int'l, Inc., 274 B.R. 427 (Bankr. D. Del. 2002) is persuasive. In accordance with what the Court considered the clear, unambiguous language of 502(b), it ordered in *Loewen* that the claims in dispute exclude post-petition interest and be discounted to present value. JPMorgan contends that *Loewen* is distinguishable because its claims were for non-interest-bearing principal. In *Loewen,* however, some of the claims "include[d] amounts for post-petition interest, late fees, attorneys' fees and other charges." *Id.* at 429-30. Further, the Court is not persuaded that the distinction between interest-bearing claims and non-interest-bearing claims is significant to the issue at bar.

V. Conclusion

For the reasons discussed, the Court will affirm the Bankruptcy Court's Claims Orders. An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	:	Chapter 11
OAKWOOD HOMES CORP. et al.,	:	Bankruptcy No. 02-13396 PJW
Debtors.	:	Civil Action No. 04-835 JJF
JPMORGAN CHASE BANK, Trustee,	:	
Appellant,	:	
v.	:	
U.S. BANK NATIONAL ASSOCIATION,	:	
Appellee.	:	

ORDER

(Filed Feb. 17, 2005)

At Wilmington, this 17 day of February 2005, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED THAT the May 6, 2004, orders of the Bankruptcy Court granting, in part, and denying, in part, the objections of Appellee U.S. Bank National Association to the proofs of claim filed by JPMorgan are **AFFIRMED**.

February 17, 2005
DATE

/s/ Joseph J. Farnan J.
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
OAKWOOD HOMES CORPORATION et al.,	:	Case No. 02-13396 (PJW)
Debtors.	:	Jointly Administered
	:	RE: Docket No. 4025

ORDER GRANTING, IN PART, AND DENYING, IN PART, THE OBJECTIONS OF U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, TO AMENDED PROOF OF CLAIM NO. 8022 FILED BY JPMORGAN CHASE BANK, AS TRUSTEE, FOR OMI TRUST 1997-B

(Filed May 6, 2004)

Upon the Objection of U.S. Bank National Association, in its capacity as indenture trustee ("U.S. Bank"), to the Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guaranty Claims and Motion for Estimation of Such Claim Pursuant to Section 502(c) of the Bankruptcy Code, dated October 10, 2003 (the "Initial Objection"); and upon the Response of JPMorgan Chase Bank, in its capacity as trustee ("JPMorgan"), to U.S. Bank National Association's Objection to the Allowance of the Class B-2 Certificate REMIC Guarantee Claims and Motion to Estimate the Contingent Portion of the Claims, dated November 6, 2003, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to November 3 and 4, 2003, respectively (the "Initial Response"); and upon the Supplemental

Objection of U.S. Bank National Association, in its Capacity as Indenture Trustee, to the REMIC Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guarantee Claims, dated November 21, 2003 (the "Supplemental Objection," together with the Initial Objection, the "Objections"); and upon the Response of JPMorgan Chase Bank, in its Capacity as Trustee, to U.S. Bank National Association's Supplemental Objection to the Class B-2 Certificate REMIC Guarantee Claims, dated January 16, 2004, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to January 14 and 15, 2004, respectively (the "Supplemental Response," together with the Initial Response, the "Responses"); and upon the Oakwood Homes Corporation Discount Rate Report of Houlihan Lokey Howard & Zukin, dated February 2004; and upon the Expert Report of Bradford Cornell of Charles River Associates, dated February 10, 2004, and all parties in interest having received good and sufficient notice of the Objections and the Responses; and hearings having been held on the Objections on November 13, 2003, November 26, 2003, January 23, 2004 and March 12, 2004; and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY FOUND THAT:

(A) The Court has jurisdiction to consider the Objections and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

(C) Debtor Oakwood Homes Corporation ("OHC") and its affiliates design, manufacture, market and distribute modular homes. In addition, OHC, through its subsidiary

Oakwood Acceptance Corporation, finances the majority of its retail sales through retail installment contracts or mortgages ("RICs").

(D) OHC funds its financing activities primarily by securitizing the RICs using Real Estate Mortgage Investment Conduits ("REMIC") involving the sale to institutional investors of trust certificates. Non-debtor REMIC trusts issue the certificates, which evidence beneficial ownership interests in the assets of the trusts, including the RICs transferred to the trusts by OHC's affiliate. The holders of the REMIC trust certificates are entitled to payment by the REMIC trusts of principal and interest from monthly collections on the RICs.

(E) As part of the securitization transactions, OHC issued guarantees of any shortfalls in the payment of principal and interest due on the Class B-2 Certificates (the "Limited Guarantees"). Several REMIC trusts, including OMI Trust 1997-B, issued Class B-2 Certificates covered by the Limited Guarantees.

(F) JPMorgan, in its capacity as successor trustee for OMI Trust 1997-B, filed an Amended Proof of Claim (No. 8022) on behalf of the holders of the Class B-2 Certificates issued by OMI Trust 1997-B for the amount of principal and interest shortfalls due or projected to become due under the Limited Guarantees (the "Limited Guarantee Claims").

(G) In the Objections, U.S. Bank seeks, *inter alia*, an order disallowing the Limited Guarantee Claims to the extent that (a) they include amounts for interest shortfalls accruing after the petition date (November 15, 2002), (b) they include the increase in OHC's guarantee liabilities resulting from the so-called Flip-Up Motion (as defined in

the Objections and the Responses) and (c) they are not discounted to present value as of the petition date at the rate of 20%.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For the reasons stated on the record at the November 26, 2003 hearing, the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date.

2. For the reasons stated on the record at the January 23, 2004 hearing, the Limited Guarantee Claims are allowed to the extent they include the increase in OHC's guarantee liabilities resulting from the Flip-Up Motion.

3. For the reasons stated on the record at the January 23, 2004 hearing, Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date.

4. For the reasons stated on the record at the January 23, 2004 hearing, the proper rate to apply to discount the Limited Guarantee Claims to present value as of the petition date is the prudent investor rate.

5. For the reasons stated on the record at the March 12, 2004 hearing, the Court adopts the prudent investor rate of 7.74% proposed by JPMorgan's expert, Bradford Cornell of Charles River Associates, as the proper discount rate.

6. As stipulated by the parties, the Limited Guarantee Claims are allowed unsecured claims for interest shortfalls accruing prior to the petition date in the amount of $37,723.81.

7. As stipulated by the parties, and subject to each party's right to appeal from any of the above-referenced rulings, the Limited Guarantee Claims are allowed unsecured claims for principal shortfalls in the amount of $7,415,899, which after discounting to present value at the rate of 7.74% is $2,907,962.

8. This Court retains jurisdiction to interpret, implement and enforce the provisions of this order.

Dated: May 5, 2004
Wilmington, Delaware

/s/ Peter J. Walsh
THE HONORABLE
PETER J. WALSH
UNITED STATES
BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
OAKWOOD HOMES CORPORATION et al.,	:	Case No. 02-13396 (PJW)
Debtors.	:	Jointly Administered
	:	RE: Docket No. 4025

ORDER GRANTING, IN PART, AND DENYING, IN PART, THE OBJECTIONS OF U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, TO AMENDED PROOF OF CLAIM NO. 8019 FILED BY JPMORGAN CHASE BANK, AS TRUSTEE, FOR OMI TRUST 1998-B

(Filed May 6, 2004)

Upon the Objection of U.S. Bank National Association, in its capacity as indenture trustee ("U.S. Bank"), to the Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guaranty Claims and Motion for Estimation of Such Claim Pursuant to Section 502(c) of the Bankruptcy Code, dated October 10, 2003 (the "Initial Objection"); and upon the Response of JPMorgan Chase Bank, in its capacity as trustee ("JPMorgan"), to U.S. Bank National Association's Objection to the Allowance of the Class B-2 Certificate REMIC Guarantee Claims and Motion to Estimate the Contingent Portion of the Claims, dated November 6, 2003, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to November 3 and 4, 2003, respectively (the "Initial Response"); and upon the Supplemental

Objection of U.S. Bank National Association, in its Capacity as Indenture Trustee, to the REMIC Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guarantee Claims; dated November 21, 2003 (the "Supplemental Objection," together with the Initial Objection, the "Objections"); and upon the Response of JPMorgan Chase Bank, in its Capacity as trustee, to U.S. Bank National Association's Supplemental Objection to the Class B-2 Certificate REMIC Guarantee Claims, dated January 16, 2004, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to January 14 and 15, 2004, respectively (the "Supplemental Response," together with the Initial Response, the "Responses"); and upon the Oakwood Homes Corporation Discount Rate Report of Houlihan Lokey Howard & Zukin, dated February 2004; and upon the Expert Report of Bradford Cornell of Charles River Associates, dated February 10, 2004, and all parties in interest having received good and sufficient notice of the Objections and the Responses; and hearings having been held on the Objections on November 13, 2003, November 26, 2003, January 23, 2004 and March 12, 2004; and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY FOUND THAT:

(A) The Court has jurisdiction to consider the Objections and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

(C) Debtor Oakwood Homes Corporation ("OHC") and its affiliates design, manufacture, market and distribute modular homes. In addition, OHC, through its subsidiary

Oakwood Acceptance Corporation, finances the majority of its retail sales through retail installment contracts or mortgages ("RICs").

(D) OHC funds its financing activities primarily by securitizing the RICs using Real Estate Mortgage Investment Conduits ("REMIC") involving the sale to institutional investors of trust certificates. Non-debtor REMIC trusts issue the certificates, which evidence beneficial ownership interests in the assets of the trusts, including the RICs transferred to the trusts by OHC's affiliate. The holders of the REMIC trust certificates are entitled to payment by the REMIC trusts of principal and interest from monthly collections on the RICs.

(E) As part of the securitization transactions, OHC issued guarantees of any shortfalls in the payment of principal and interest due on the Class B-2 Certificates (the "Limited Guarantees"). Several REMIC trusts, including OMI Trust 1998-B, issued Class B-2 Certificates covered by the Limited Guarantees.

(F) JPMorgan, in its capacity as successor trustee for OMI Trust 1998-B, filed an Amended Proof of Claim (No. 8019) on behalf of the holders of the Class B-2 Certificates issued by OMI Trust 1998-B for the amount of principal and interest shortfalls due or projected to become due under the Limited Guarantees (the "Limited Guarantee Claims").

(G) In the Objections, U.S. Bank seeks, *inter alia*, an order disallowing the Limited Guarantee Claims to the extent that (a) they include amounts for interest shortfalls accruing after the petition date (November 15, 2002), (b) they include the increase in OHC's guarantee liabilities resulting from the so-called Flip-Up Motion (as defined in

the Objections and the Responses) and (c) they are not discounted to present value as of the petition date at the rate of 20%.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For the reasons stated on the record at the November 26, 2003 hearing, the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date.

2. For the reasons stated on the record at the January 23, 2004 hearing, the Limited Guarantee Claims are allowed to the extent they include the increase in OHC's guarantee liabilities resulting from the Flip-Up Motion.

3. For the reasons stated on the record at the January 23, 2004 hearing, Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date.

4. For the reasons stated on the record at the January 23, 2004 hearing, the proper rate to apply to discount the Limited Guarantee Claims to present value as of the petition date is the prudent investor rate.

5. For the reasons stated on the record at the March 12, 2004 hearing, the Court adopts the prudent investor rate of 7.74% proposed by JPMorgan's expert, Bradford Cornell of Charles River Associates, as the proper discount rate.

6. As stipulated by the parties, the Limited Guarantee Claims are allowed unsecured claims for interest shortfalls accruing prior to the petition date in the amount of $86,082.50.

7. As stipulated by the parties, and subject to each party's right to appeal from any of the above-referenced rulings, the Limited Guarantee Claims are allowed unsecured claims for principal shortfalls in the amount of $15,000,000, which after discounting to present value at the rate of 7.74% is $3,998,597.

8. This Court retains jurisdiction to interpret, implement and enforce the provisions of this order.

Dated: May 5, 2004
Wilmington, Delaware

/s/ Peter J. Walsh
THE HONORABLE
PETER J. WALSH
UNITED STATES
BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
OAKWOOD HOMES CORPORATION et al.,	:	Case No. 02-13396 (PJW)
Debtors.	:	Jointly Administered
	:	RE: Docket No. 4025

ORDER GRANTING, IN PART, AND DENYING, IN PART, THE OBJECTIONS OF U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, TO AMENDED PROOF OF CLAIM NO. 8020 FILED BY JPMORGAN CHASE BANK, AS TRUSTEE, FOR OMI TRUST 1997-D

(Filed May 6, 2004)

Upon the Objection of U.S. Bank National Association, in its capacity as indenture trustee ("U.S. Bank"), to the Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guaranty Claims and Motion for Estimation of Such Claim Pursuant to Section 502(c) of the Bankruptcy Code, dated October 10, 2003 (the "Initial Objection"); and upon the Response of JPMorgan Chase Bank, in its capacity as trustee ("JPMorgan"), to U.S. Bank National Association's Objection to the Allowance of the Class B-2 Certificate REMIC Guarantee Claims and Motion to Estimate the Contingent Portion of the Claims, dated November 6, 2003, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to November 3 and 4, 2003, respectively (the "Initial Response"); and upon the Supplemental

Objection of U.S. Bank National Association, in its Capacity as Indenture Trustee, to the REMIC Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guarantee Claims, dated November 21, 2003 (the "Supplemental Objection," together with the Initial Objection, the "Objections"); and upon the Response of JPMorgan Chase Bank, in its Capacity as Trustee, to U.S. Bank National Association's Supplemental Objection to the Class B-2 Certificate REMIC Guarantee Claims, dated January 16, 2004, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to January 14 and 15, 2004, respectively (the "Supplemental Response," together with the Initial Response, the "Responses"); and upon the Oakwood Homes Corporation Discount Rate Report of Houlihan Lokey Howard & Zukin, dated February 2004; and upon the Expert Report of Bradford Cornell of Charles River Associates, dated February 10, 2004, and all parties in interest having received good and sufficient notice of the Objections and the Responses; and hearings having been held on the Objections on November 13, 2003, November 26, 2003, January 23, 2004 and March 12, 2004; and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY FOUND THAT:

(A) The Court has jurisdiction to consider the Objections and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

(C) Debtor Oakwood Homes Corporation ("OHC") and its affiliates design, manufacture, market and distribute modular homes. In addition, OHC, through its subsidiary

Oakwood Acceptance Corporation, finances the majority of its retail sales through retail installment contracts or mortgages ("RICs.").

(D) OHC funds its financing activities primarily by securitizing the RICs using Real Estate Mortgage Investment Conduits ("REMIC") involving the sale to institutional investors of trust certificates. Non-debtor REMIC trusts issue the certificates, which evidence beneficial ownership interests in the assets of the trusts, including the RICs transferred to the trusts by OHC's affiliate. The holders of the REMIC trust certificates are entitled to payment by the REMIC trusts of principal and interest from monthly collections on the RICs.

(E) As part of the securitization transactions, OHC issued guarantees of any shortfalls in the payment of principal and interest due on the Class B-2 Certificates (the "Limited Guarantees"). Several REMIC trusts, including OMI Trust 1997-D, issued Class B-2 Certificates covered by the Limited Guarantees.

(F) JPMorgan, in its capacity as successor trustee for OMI Trust 1997-D, filed an Amended Proof of Claim (No. 8020) on behalf of the holders of the Class B-2 Certificates issued by OMI Trust 1997-D for the amount of principal and interest shortfalls due or projected to become due under the Limited Guarantees (the "Limited Guarantee Claims").

(G) In the Objections, U.S. Bank seeks, *inter alia*, an order disallowing the Limited Guarantee Claims to the extent that (a) they include amounts for interest shortfalls accruing after the petition date (November 15, 2002), (b) they include the increase in OHC's guarantee liabilities resulting from the so-called Flip-Up Motion (as defined in

the Objections and the Responses) and (c) they are not discounted to present value as of the petition date at the rate of 20%.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For the reasons stated on the record at the November 26, 2003 hearing, the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date.

2. For the reasons stated on the record at the January 23, 2004 hearing, the Limited Guarantee Claims are allowed to the extent they include the increase in OHC's guarantee liabilities resulting from the Flip-Up Motion.

3. For the reasons stated on the record at the January 23, 2004 hearing, Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date.

4. For the reasons stated on the record at the January 23, 2004 hearing, the proper rate to apply to discount the Limited Guarantee Claims to present value as of the petition date is the prudent investor rate.

5. For the reasons stated on the record at the March 12, 2004 hearing, the Court adopts the prudent investor rate of 7.74% proposed by JPMorgan's expert, Bradford Cornell of Charles River Associates, as the proper discount rate.

6. As stipulated by the parties, the Limited Guarantee Claims are allowed unsecured claims for interest shortfalls accruing prior to the petition date in the amount of $57,882.55.

7. As stipulated by the parties, and subject to each party's right to appeal from any of the above-referenced rulings, the Limited Guarantee Claims are allowed unsecured claims for principal shortfalls in the amount of $10,096,367, which after discounting to present value at the rate of 7.74% is $2,364,558.

8. This Court retains jurisdiction to interpret, implement and enforce the provisions of this order.

Dated: May 5, 2004
Wilmington, Delaware

/s/ Peter J. Walsh
THE HONORABLE
PETER J. WALSH
UNITED STATES
BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
OAKWOOD HOMES CORPORATION et al.,	:	Case No. 02-13396 (PJW)
Debtors.	:	Jointly Administered
	:	**RE: Docket No. 4025**

ORDER GRANTING, IN PART, AND DENYING, IN PART, THE OBJECTIONS OF U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, TO AMENDED PROOF OF CLAIM NO. 8023 FILED BY JPMORGAN CHASE BANK, AS TRUSTEE FOR OMI TRUST 1997-A

(Filed May 6, 2004)

Upon the Objection of U.S. Bank National Association, in its capacity as indenture trustee ("U.S. Bank"), to the Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guaranty Claims and Motion for Estimation of Such Claim Pursuant to Section 502(c) of the Bankruptcy Code, dated October 10, 2003 (the "Initial Objection"); and upon the Response of JPMorgan Chase Bank, in its capacity as trustee ("JPMorgan"), to U.S. Bank National Association's Objection to the Allowance of the Class B-2 Certificate REMIC Guarantee Claims and Motion to Estimate the Contingent Portion of the Claims, dated November 6, 2003, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to November 3 and 4, 2003, respectively (the "Initial Response"); and upon the Supplemental

Objection of U.S. Bank National Association, in its Capacity as Indenture Trustee, to the REMIC Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guarantee Claims, dated November 21, 2003 (the "Supplemental Objection," together with the Initial Objection, the "Objections"); and upon the Response of JPMorgan Chase Bank, in its Capacity as Trustee, to U.S. Bank National Association's Supplemental Objection to the Class B-2 Certificate REMIC Guarantee Claims, dated January 16, 2004, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to January 14 and 15, 2004, respectively (the "Supplemental Response," together with the Initial Response, the "Responses"); and upon the Oakwood Homes Corporation Discount Rate Report of Houlihan Lokey Howard & Zukin, dated February 2004; and upon the Expert Report of Bradford Cornell of Charles River Associates, dated February 10, 2004, and all parties in interest having received good and sufficient notice of the Objections and the Responses; and hearings having been held on the Objections on November 13, 2003, November 26, 2003, January 23, 2004 and March 12, 2004; and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY FOUND THAT:

(A) The Court has jurisdiction to consider the Objections and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

(C) Debtor Oakwood Homes Corporation ("OHC") and its affiliates design, manufacture, market and distribute modular homes. In addition, OHC, through its subsidiary

Oakwood Acceptance Corporation, finances the majority of its retail sales through retail installment contracts or mortgages ("RICs").

(D) OHC funds its financing activities primarily by securitizing the RICs using Real Estate Mortgage investment Conduits ("REMIC") involving the sale to institutional investors of trust certificates. Non-debtor REMIC trusts issue the certificates, which evidence beneficial ownership interests in the assets of the trusts, including the RICs transferred to the trusts by OHC's affiliate. The holders of the REM1C trust certificates are entitled to payment by the REMIC trusts of principal and interest from monthly collections on the RICs.

(E) As part of the securitization transactions, OHC issued guarantees of any shortfalls in the payment of principal and interest due on the Class B-2 Certificates (the "Limited Guarantees"). Several REMIC trusts, including OMI Trust 1997-A, issued Class B-2 Certificates covered by the Limited Guarantees.

(F) JPMorgan, in its capacity as successor trustee for OMI Trust 1997-A, filed an Amended Proof of Claim (No. 8023) on behalf of the holders of the Class B-2 Certificates issued by OMI Trust 1997-A for the amount of principal and interest shortfalls due or projected to become due under the Limited Guarantees (the "Limited Guarantee Claims").

(G) In the Objections, U.S. Bank seeks, *inter alia,* an order disallowing the Limited Guarantee Claims to the extent that (a) they include amounts for interest shortfalls accruing after the petition date (November 15, 2002), (b) they include the increase in OHC's guarantee liabilities resulting from the so-called Flip-Up Motion (as defined in

the Objections and the Responses) and (c) they are not discounted to present value as or the petition date at the rate of 20%.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For the reasons stated on the record at the November 26, 2003 hearing, the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date.

2. For the reasons stated on the record at the January 23, 2004 hearing, the Limited Guarantee Claims are allowed to the extent they include the increase in OHC's guarantee liabilities resulting from the Flip-Up Motion.

3. For the reasons stated on the record at the January 23, 2004 hearing, Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date.

4. For the reasons stated on the record at the January 23, 2004 hearing, the proper rate to apply to discount the Limited Guarantee Claims to present value as of the petition date is the prudent investor rate.

5. For the reasons stated on the record at the March 12, 2004 hearing, the Court adopts the prudent investor rate of 7.74% proposed by JPMorgan's expert, Bradford Cornell of Charles River Associates, as the proper discount rate.

6. As stipulated by the parties, the Limited Guarantee Claims are allowed unsecured claims for interest shortfalls accruing prior to the petition date in the amount of $40,646.84.

7. As stipulated by the parties, and subject to each party's right to appeal from any of the above-referenced rulings, the Limited Guarantee Claims are allowed unsecured claims for principal shortfalls in the amount of $4,087,372, which after discounting to present value at the rate of 7.74% is $1,299,006.

8. This Court retains jurisdiction to interpret, implement and enforce the provisions of this order.

Dated: May 5, 2004
Wilmington, Delaware

/s/ Peter J. Walsh
THE HONORABLE
PETER J. WALSH
UNITED STATES
BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
OAKWOOD HOMES CORPORATION et al.,	:	Case No. 02-13396 (PJW)
Debtors.	:	Jointly Administered
	:	RE: Docket No. 4025

ORDER GRANTING, IN PART, AND DENYING, IN PART, THE OBJECTIONS OF U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, TO AMENDED PROOFS OF CLAIM NOS. 8018, 8017 AND 8016 FILED BY JPMORGAN CHASE BANK, AS TRUSTEE, FOR OMI TRUST 1998-D, OMI TRUST 1999-A AND OMI TRUST 1999-B

(Filed May 6, 2004)

Upon the Objection of U.S. Bank National Association, in its capacity as indenture trustee ("U.S. Bank"), to the Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guaranty Claims and Motion for Estimation of Such Claim Pursuant to Section 502(c) of the Bankruptcy Code, dated October 10, 2003 (the "Initial Objection"); and upon the Response of JPMorgan Chase Bank, in its capacity as trustee ("JPMorgan"), to U.S. Bank National Association's Objection to the Allowance of the Class B-2 Certificate REMIC Guarantee Claims and Motion to Estimate the Contingent Portion of the Claims, dated November 6, 2003, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to November 3 and 4, 2003, respectively

(the "Initial Response"); and upon the Supplemental Objection of U.S. Bank National Association, in its Capacity as Indenture Trustee, to the REMIC Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guarantee Claims, dated November 21, 2003 (the "Supplemental Objection," together with the Initial Objection, the "Objections"); and upon the Response of JPMorgan Chase Bank, in its Capacity as Trustee, to U.S. Bank National Association's Supplemental Objection to the Class B-2 Certificate REMIC Guarantee Claims, dated January 16, 2004, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to January 14 and 15, 2004, respectively (the "Supplemental Response," together with the Initial Response, the "Responses"); and upon the Oakwood Homes Corporation Discount Rate Report of Houlihan Lokey Howard & Zukin, dated February 2004; and upon the Expert Report of Bradford Cornell of Charles River Associates, dated February 10, 2004, and all parties in interest having received good and sufficient notice of the Objections and the Responses; and hearings having been held on the Objections on November 13, 2003, November 26, 2003, January 23, 2004 and March 12, 2004; and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY FOUND THAT:

(A) The Court has jurisdiction to consider the Objections and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

(C) Debtor Oakwood Homes Corporation ("OHC") and its affiliates design, manufacture, market and distribute modular homes. In addition, OHC, through its subsidiary Oakwood Acceptance Corporation, finances the majority of its retail sales through retail installment contracts or mortgages ("RICs").

(D) OHC funds its financing activities primarily by securitizing the RICs using Real Estate Mortgage Investment Conduits ("REMIC") involving the sale to institutional investors of trust certificates. Non-debtor REMIC trusts issue the certificates, which evidence beneficial ownership interests in the assets of the trusts, including the RICs transferred to the trusts by OHC's affiliate. The holders of the REMIC trust certificates are entitled to payment by the REMIC trusts of principal and interest from monthly collections on the RICs.

(E) As part of the securitization transactions, OHC issued guarantees of any shortfalls in the payment of principal and interest due on the Class B-2 Certificates (the "Limited Guarantees"). Several REMIC trusts, including OMI Trust 1998-D, OMI Trust 1999-A and OMI Trust 1999-B, issued Class B-2 Certificates covered by the Limited Guarantees.

(F) JPMorgan, in its capacity as successor trustee for the OMI Trust 1998-D, OMI Trust 1999-A and OMI Trust 1999-B, filed three Amended Proofs of Claim (Nos. 8018, 8017 and 8016) on behalf of the holders of the Class B-2 Certificates issued by these trusts for the amount of principal and interest shortfalls due or projected to become due under the Limited Guarantees (the "Limited Guarantee Claims").

(G) In the Objections, US. Bank seeks, *inter alia,* an order disallowing the Limited Guarantee Claims to the extent that (a) they include amounts for interest shortfalls accruing after the petition date (November 15, 2002), (b) they include the increase in OHC's guarantee liabilities resulting from the so-called Flip-Up Motion. (as defined in the Objections and the Responses) and (c) they are not discounted to present value as of the petition date at the rate of 20%.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For the reasons stated on the record at the November 26, 2003 hearing, the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date.

2. For the reasons stated on the record at the January 23, 2004 hearing, the Limited Guarantee Claims are allowed to the extent they include the increase in OHC's guarantee liabilities resulting from the Flip-Up Motion.

3. For the reasons stated un the record at the January 23, 2004 hearing, Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date.

4. For the reasons stated on the record at the January 23, 2004 hearing, the proper rate to apply to discount the Limited Guarantee Claims to present value as of the petition date is the prudent investor rate.

5. For the reasons stated on the record at the March 12, 2004 hearing, the Court adopts the prudent investor

rate of 7.74% proposed by JPMorgan's expert, Bradford Cornell of Charles River Associates, as the proper discount rate.

6. As stipulated by the parties, the Limited Guarantee Claims are allowed unsecured claims for interest shortfalls accruing prior to the petition date in the total amount of $614,552.40 as set forth specifically by trust as follows:

Trust	Pre-Petition Interest Shortfalls
1998-D	$248,305.15
1999-A	$168,318.06
1999-B	$197,929.19

7. As stipulated by the parties, and subject to each party's right to appeal from any of the above-referenced rulings, the Limited Guarantee Claims are allowed unsecured claims for principal shortfalls in the total amount of $17,185,304, after discounting to present value at the rate of 7.74%, as set forth specifically by trust as follows:

Trust	Undiscounted	NPV @ 7.74%
1998-D	$25,554,561	$7,400,411
1999-A	$24,591,125	$5,420,993
1999-B	$17,894,150	$4,363,900

8. This Court retains jurisdiction to interpret, implement and enforce the provisions of this order.

Dated: May 5, 2004
Wilmington, Delaware

/s/ Peter J. Walsh
THE HONORABLE
PETER J. WALSH
UNITED STATES
BANKRUPTCY JUDGE

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 05-2032 & 05-2033

IN RE: OAKWOOD HOMES CORPORATION,
Debtor

*JEFFERSON-PILOT LIFE INSURANCE COMPANY;
*JEFFERSON-PILOT FINANCIAL INSURANCE;
TYNDALL PARTNERS, LP and
TYNDALL INSTITUTIONAL PARTNERS, LP,
Appellants in No. 05-2032

(D.C. Civil Nos. 04-cv-00835, 04-cv-00836,
04-cv-00837, 04-cv-00838 and 04-cv-00839)

IN RE: OAKWOOD HOMES CORPORATION,
Debtor

JP MORGAN CHASE BANK,
Appellant in No. 05-2033

(D.C. Civil Nos. 04-cv-00835, 04-cv-00836,
04-cv-00837, 04-cv-00838 and 04-cv-00839)

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil Nos. 04-cv-00835, 04-cv-00836,
04-cv-00837, 04-cv-00838 and 04-cv-00839)
District Judge: Honorable Joseph J. Farnan, Jr.

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* Amended in accordance with Clerk's Order dated 7/22/05.

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDELL, AMBRO, FUENTES, SMITH, FISHER, VAN ANTWERPEN and CHAGARES, Circuit Judges

---

SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC

The petition for rehearing filed by Appellee having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc,* the petition for rehearing is hereby denied.

By the Court,

/s/ Franklin S. Van Antwerpen
Circuit Judge

Dated: July 11, 2006

CRG/cc: G. Eric Brunstad Jr., Esq.
Timothy B. DeSieno, Esq.
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Rheba Rutkowski, Esq.
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FILED
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SUPREME COURT, U.S.

No. 06-517

IN THE

Supreme Court of the United States

U.S. BANK NATIONAL ASSOCIATION,
as Indenture Trustee,

Petitioner,

v.

JPMORGAN CHASE BANK, as Trustee;
JEFFERSON-PILOT LIFE INSURANCE COMPANY;
JEFFERSON-PILOT FINANCIAL INSURANCE COMPANY;
TYNDALL PARTNERS, LP; and TYNDALL
INSTITUTIONAL PARTNERS, LP,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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John J. Galban
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QUESTION PRESENTED

Whether section 502(b) of the Bankruptcy Code requires that, with respect to a claim consisting of principal and interest arising from an interest-bearing obligation, the principal amount of the claim must be discounted to present value where the bankruptcy court has already disallowed unmatured interest on the same claim under section 502(b)(2) of the Code.

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PRELIMINARY STATEMENT

Petitioner is the indenture trustee for holders of certain unsecured notes issued by Oakwood Homes Corporation ("Oakwood"). Petitioner objected to proofs of claim filed in Oakwood's chapter 11 bankruptcy case by a different indenture trustee on behalf of a group of creditors that advanced approximately $95.5 million to certain third-party, non-debtor trusts that Oakwood created. In exchange for these advances, the trusts issued interest-bearing certificates to these creditors, including Respondents, obligating the trusts to repay the advances plus interest over time. Oakwood guaranteed the trusts' principal and interest obligations under the certificates and the trusts could not meet their obligations.

After Petitioner objected to these proofs of claim, the bankruptcy court disallowed the unmatured interest portion of the claims under section 502(b)(2) of the Bankruptcy Code and also ruled that the principal amount of the claims must be "discounted to present value"(thereby reducing the aggregate principal amount from $95.5 million to $25.3 million) on the ground that Oakwood was obligated to make its principal payments in installments over time. The district court affirmed. In the decision below, the Third Circuit reversed and directed that the principal portion of the claims be allowed in full.

The decision below provides no occasion for certiorari review. First, notwithstanding Petitioner's efforts to manufacture a split of authority among the circuit courts, there is none. Critically, and as the decision below explicitly recognizes, Petitioner could not – and still cannot – cite *any* case in which a court has required the principal amount of a claim on an interest-bearing obligation to be discounted to present value under section 502(b) where, as here, the court has already disallowed unmatured interest on the same claim under section 502(b)(2).

Second, contrary to Petitioner's contentions, the decision below is fully consistent with this Court's precedents concerning the proper interpretation of the provisions and policies of the Bankruptcy Code. Third, the decision below correctly held that section 502(b) does not require that the principal portion of claims

on interest-bearing obligations be discounted to present value after unmatured interest has been disallowed under section 502(b)(2) and that such discounting would be inequitable. Finally, the Petition presents no issue of extraordinary public importance warranting this Court's intervention. In sum, the Petition presents no certworthy issue and should be denied.

STATEMENT OF THE CASE

This matter arises out of Oakwood's chapter 11 bankruptcy case. Petitioner is U.S. Bank National Association ("US Bank"), indenture trustee for holders of certain unsecured notes issued by Oakwood. Petitioner objected to proofs of claim filed in Oakwood's chapter 11 case by JPMorgan Chase Bank, as indenture trustee ("JPMorgan"), on behalf of a group of creditors including Jefferson-Pilot Life Insurance Company, Jefferson-Pilot Financial Insurance Company, Tyndall Partners, LP, and Tyndall Institutional Partners, LP (collectively with JPMorgan, "Respondents"). Respondents (together with certain other creditors that settled during the proceedings in the Third Circuit) advanced approximately $95.5 million to certain third-party, non-debtor trusts created by Oakwood. In exchange for these advances, the trusts issued interest-bearing certificates to Respondents, obligating the trusts to repay the advances plus interest over time. Oakwood guaranteed the trusts' principal and interest obligations under the certificates.

The Securitization Transactions

Prior to filing its chapter 11 case on November 15, 2003 ("Petition Date"), Oakwood was in the business of designing, manufacturing, and selling modular homes to consumers. Pet. App. 4, 59. Oakwood operated several wholly owned subsidiaries, including Oakwood Acceptance Corporation, LLC ("OAC") and Oakwood Mortgage Investors, Inc. ("OMI"). *Id.*

OAC was in the business of financing purchases of Oakwood's homes. App.[1] 579. To purchase a home on credit, a consumer would execute a retail installment contract ("RIC"), pursuant to which the consumer agreed to pay the purchase price in installments over a period of up to thirty years. OMI "securitized" these RICs – i.e., OMI bundled together groups of RICs and sold them to certain real estate mortgage investment conduit securitization trusts ("REMIC trusts"). OMI created the REMIC trusts specifically for the purpose of buying the RICs that OAC generated. The securitization process allowed Oakwood to "cash out" the value of the bundled RICs by selling them to the REMIC trusts, thereby converting the consumers' long-term payment obligations into current cash. Pet. App. 4-6, 59-60.

OMI established each REMIC trust under the terms of a pooling and servicing agreement entered into by OMI, OAC, and a trustee for each trust ("Pooling Agreement"). As a result of the sale of the RICs to the REMIC trusts, the trusts became the owners of the RICs and thus became entitled to receive the installment payments that the consumers were obligated to make under the RICs. Pet. App. 4-6, 59-60, 68; App. 50-51, 579. To pay for the RICs, each REMIC trust borrowed money in the marketplace by issuing certificates to investors who, in exchange for the certificates, advanced money to the issuing trusts. The certificates obligated the trusts to repay the investors' cash advances by paying the investors principal and interest periodically over time. Pet. App. 4-6, 59-60, 68, 579. Each REMIC trust issued certificates in various "tranches," each with a different payment priority, meaning that certain tranches of certificates have the right to be paid from the trust's assets ahead of others. To induce investors to advance funds in exchange for the certificates with the lowest payment priority (the riskiest certificates), Oakwood guaranteed principal and interest payments due investors (such as

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[1] All references herein to "App." are to the Appendix filed in the Third Circuit.

Respondents) who acquired these low-priority certificates. Pet. App. 5-6, 60, 68, 130.

The Advances, B-2 Certificates, And Limited Guarantees

Respondents (together with certain other creditors that settled during the proceedings in the Third Circuit) advanced approximately $95.5 million to purchase low-priority, interest-bearing certificates issued by eight REMIC trusts ("Trusts"). These certificates ("B-2 Certificates") have an aggregate "face" (principal) amount of approximately $98.7 million and require the Trusts to pay this amount as principal and an additional amount of interest.[2] Oakwood, in turn, guaranteed the payment of principal and interest under the B-2 Certificates pursuant to certain Limited Guarantees ("Guarantees"). Pet. App. 5-6, 60, 68; App. 44-48, 579. Each Trust issued its B-2 Certificates pursuant to a trust indenture agreement between the issuing Trust and an indenture trustee representing the certificate holders.

The structure of the securitization transactions reveals that the parties contemplated that consumers who purchased homes on credit would make principal and interest payments due on their RICs to the Trusts (because the Trusts had purchased their RICs). In turn, the Trusts would pay principal and interest to the B-2 Certificates holders from amounts they received from the consumers. Both before and after the Petition Date, however, many consumers failed to make their installment payments under

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[2] The face amount of the B-2 Certificates is approximately $98.7 million, for which the holders of the B-2 Certificates that appealed the Claims Orders paid a total of approximately $95.5 million (approximately 89.8 to 99.9 cents for each dollar of face amount). App. 142 (showing prices paid for each series of B-2 Certificates). The face amount is greater than the price paid because the interest offered on the certificates was inadequate to compensate for the risks associated with them. The market discounted the price to reflect this inadequacy at the time Respondents acquired their B-2 Certificates.

the RICs. The Trusts thus lacked the funds necessary to pay the principal and interest due under the B-2 Certificates and Oakwood became obligated to make up the shortfalls under its Guarantees.

The Guarantees And Oakwood's Obligations

Each Guarantee provides that Oakwood "hereby unconditionally and absolutely guarantees the full and prompt payment to the [trustee of the particular Trust] on or prior to the Remittance Date relating to each Distribution Date [the date the trustee is supposed to make periodic payments to Respondents under the B-2 Certificates] of the Limited Guarantee Amount (as defined in the Pooling Agreements)." Pet. App. 5-6, 12-13; App. 44. The Pooling Agreements define this amount as follows: 'Limited Guarantee Payment Amount': "With respect to any Distribution Date, the amount . . . equal to the amount of shortfalls in collections on the Assets [including the RICs] otherwise distributable on such Distribution Date . . . ." Pet. App. 5, 13.

Each Guarantee provides: "This is a guaranty of payment and not of collection." App. 45-46. *See Minority Equity Capital Corp. v. Weinstein (In re Weinstein)*, 31 B.R. 804, 811-12 (Bankr. E.D.N.Y. 1983) (one who guarantees "payment" is absolutely liable to make payment upon default by the principal; one who guarantees "collection" incurs only a conditional liability after all attempts to obtain payment from the principal have failed); RESTATEMENT 3D OF SURETYSHIP & GUARANTY, § 15(b) (ALI 1996) ("guaranty of collection" triggers liability only after collection efforts have failed).

It is undisputed that: (1) the Guarantees require Oakwood to make up any shortfalls in amounts necessary to make the principal and interest payments required under the B-2 Certificates; (2) the Trusts will not generate sufficient cash flows to make these payments; (3) as a result of past, current, and future shortfalls of principal and interest, Oakwood's obligations under the Guarantees have been and will continue to be triggered; and (4) Oakwood has not honored its obligations under the Guarantees to fund the shortfalls. Pet. App. 4-6, 12-13; App. 44-48, 573-74, 137-40, 632-38.

Respondents' Claims

When a debtor such as Oakwood commences a bankruptcy case, a bankruptcy estate is created consisting of all of the debtor's property. 11 U.S.C. §§ 103(a) & 541(a). A debtor's monetary obligations to creditors constitute "claims" against the bankruptcy estate. 11 U.S.C. §§ 101(5) & 502(b). Creditors holding rights to payment against the debtor, whether due presently or in the future, are entitled to file a "proof of claim" with the bankruptcy court. 11 U.S.C. §§ 101(10) & 501(a); Fed. R. Bankr. P. 3003. Creditors filing proofs of claim may be entitled to distributions (to the extent available) from the bankruptcy estate. Only creditors that file proofs of claim are entitled to distributions, *see* Fed. R. Bankr. P. 3003(c)(2), and then only to the extent that their claims are "allowed," *see Johns v. Rousseau Mortgage Corp. (In re Johns)*, 37 F.3d 1021, 1023 n.1 (3d Cir. 1994) (citing 11 U.S.C. § 502(a)).

A filed claim is "allowed" automatically if no party in interest objects. 11 U.S.C. § 502(a). If an objection to a claim is filed, however, the bankruptcy court must resolve the objection and either allow or disallow the claim under section 502(b). Specifically, section 502(b) directs that, if an objection to a claim has been filed, the court "shall determine the amount of such claim . . . as of the date of the filing of the petition, except to the extent that [one of the exceptions to allowance listed in section 502(b) applies]." 11 U.S.C. § 502(b).

For bankruptcy purposes, Respondents' guaranty claims against Oakwood ("Claims") consist of three components: (1) interest shortfalls accruing before Oakwood filed for bankruptcy; (2) interest shortfalls accruing after Oakwood filed for bankruptcy; and (3) principal shortfalls. Under applicable bankruptcy law, claims for interest accruing before a debtor files for bankruptcy (i.e., claims for "prepetition" interest) are allowable. *E.g.*, *Vaillancourt v. Marlow (In re Vaillancourt)*, 197 B.R. 464, 465-66 (Bankr. M.D. Pa. 1996). The bankruptcy court allowed the prepetition interest component of the Claims and this aspect of the Claims Orders is not at issue here. Pet. App. 7-8. A claim for interest accruing after a debtor files for bankruptcy ("postpetition" interest) is disallowed to the extent that "such claim

is for unmatured interest." 11 U.S.C. § 502(b)(2). "Unmatured" interest means postpetition interest that has not yet accrued (matured) at the time the debtor files for bankruptcy. *E.g.*, *In re Pharmadyne Labs., Inc.*, 53 B.R. 517, 522 (Bankr. D.N.J. 1985). The bankruptcy court disallowed the postpetition interest component of the Claims and this aspect of the Claims Orders is not at issue here.

The issue is the bankruptcy court's treatment of the principal component of the Claims, the principal that Respondents (and other settling creditors) advanced that the Trusts have not repaid and that Oakwood is obligated to pay under its Guarantees ("Principal Claims"). Under applicable bankruptcy law, Respondents are entitled to assert the full amount of their Principal Claims against Oakwood and to receive a distribution from Oakwood's bankruptcy estate based on this amount.

JPMorgan filed Amended Proofs of Claim with the bankruptcy court on behalf of the holders of the B-2 Certificates (including Respondents) for Oakwood's failure to satisfy its obligations under its Guarantees. The parties stipulated to the amount of principal shortfalls. Pet. App. 7.

The Claims Objections

US Bank objected to the Claims in separate filings ("Claims Objections"). US Bank's motivation in filing its Claims Objections was to reduce the amount of the Claims so that it could recover a greater amount on its own claims; i.e., the less Respondents receive, the more US Bank will receive.

As is relevant here, US Bank sought disallowance of the Claims to the extent that they included (1) postpetition interest shortfalls and (2) principal shortfalls due in the future that were not discounted to present value at a maximum rate of 20%. JPMorgan, on behalf of the holders of B-2 Certificates, filed separate responses to the Claims Objections.

The Claims Orders

The bankruptcy court ruled that Respondents' claims for postpetition interest must be disallowed under section 502(b)(2), and that the Principal Claims must be "discounted to present

value" on the theory that Oakwood was obligated to make principal payments in the future as each shortfall arose. Pet. App. 7. In so doing, the court rejected JPMorgan's argument that discounting the principal shortfalls to present value while at the same time disallowing the postpetition interest shortfalls constitutes an impermissible "double discounting" of the Claims. App. 152-57. Using a discount rate of 7.74% (the rate is not at issue here), the Principal Claims in the aggregate amount of $95.5 million have a "present value" of $25,337,168. On May 6, 2004, the bankruptcy court entered its Claims Orders, granting in part, and denying, in part, the Claims Objections, and reflecting these rulings. Pet. App. 7-8.

The District Court's Decision On Appeal

Respondents timely appealed the Claims Orders to the district court, which issued a memorandum and order affirming the Claims Orders. Pet. App. 58-65. The court ruled that the Claims Orders are supported by "a plain reading of section 502(b)" and that "section 502(b)'s language clearly and unambiguously required the bankruptcy court to both discount the [Principal Claims] to present value and to exclude post-petition interest." *Id.* at 62-63. According to the district court, this result is "not at odds with the overarching purposes of the Bankruptcy Code" because the B-2 Certificates "are certificates for future payments." *Id.* at 63. The court stated that the parties stipulated that principal payments arise in the future and that, "[i]n effect, the parties stipulated that the REMIC Trusts are not liable for the full principal upon filing, and thus the full principal is not accelerated." *Id.* On this basis, the court concluded that Oakwood, as the guarantor of the Trusts, "cannot be held liable for the full principal upon filing." *Id.*

While noting that the bankruptcy court did not state the basis for its Claims Orders, the district court found persuasive *In re Loewen Group, Int'l*, 274 B.R. 427 (Bankr. D. Del. 2002), in which the same bankruptcy court concluded that section 502(b) requires that claims for principal be discounted to present value as of the petition date. Pet. App. 63-64. The district court rejected Respondents' argument that *Loewen* is distinguishable because the claims that were discounted to present value in that case were non-

interest bearing, stating that it was "not persuaded that the distinction between interest-bearing and non-interest-bearing claims is significant to the issue at bar." *Id.*

The Third Circuit's Decision

The Third Circuit consolidated three appeals challenging the district court's affirmance of the Claims Orders. During the pendency of the appeals, the parties to one appeal settled, leaving the Third Circuit to decide the two appeals filed by Respondents.

In reversing the district court's decision, the Third Circuit first examined the operative documents, concluding that the Claims involve separable interest and principal components, and not merely 'a singular future liability" that could properly be discounted to present value. Pet. App. 12-14. Rejecting US Bank's contrary arguments, the court held that "[t]he fact that the claims here arise only because of Oakwood's obligations under the Guarantee does not change the fundamental economic nature of the B-2 Certificate holders' bargained-for transaction." *Id.* at 12. The court reasoned that the Guarantee required Oakwood to make principal and interest payments in the event of any shortfalls, and thus placed Oakwood in the same position as the Trusts with respect to the obligation to make such payments, and that both the bankruptcy court's approach to the Claims and "U.S. Bank's own litigation strategy and admissions" support the conclusion that the Claims involve separable components. *Id.* at 12-14. The court concluded that, "as a matter of economics," the Claims comprise distinct principal and interest components. *Id.* at 14.

The Third Circuit next rejected US Bank's contention that section 502(b) clearly and unambiguously requires that "claims," as broadly defined in section 101(5), be discounted to present value, even after interest has been disallowed under section 502(b)(2). Pet. App. 18-23. In so doing, the court examined the plain language of these provisions, while taking a holistic approach to their construction, as mandated by this Court in *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). Comparing the text of section 502(b), which "speaks in terms of determining the 'amount' of a claim 'as of' the petition date," with provisions of the Bankruptcy Code that use the

term "value, as of" to refer to discounting to present value, the Third Circuit observed that, while US Bank had correctly noted that Code provisions that use the term "value" refer to "the process by which holders of already-allowed claims are paid from the bankruptcy estate," the same provisions "also refer to the discounting of future cash *installment payments*, to present value – virtually the exact financial situation we address today," Pet. App. 21, and that US Bank had conceded that "'amount' does not mean the same thing as 'value,'" *id.* at 19. The court concluded that "amount" and "value" are not synonyms, and that section 502(b) does not clearly and unambiguously require present-value discounting, as do other sections of the Code. *Id.* at 21.

The court held that "[o]nce the Bankruptcy Court disallowed post-petition interest pursuant to § 502(b), the legislative history of the provision, the economic reality of the transaction, and fundamental tenets of bankruptcy law do not permit further discounting of the principal." Pet. App. 23. Reasoning that, "[b]y its terms, 11 U.S.C. § 502(b)(2), applies only to claims involving interest in addition to principal," and noting that no case had been cited that applied discounting to an interest-bearing obligation after unmatured interest had been disallowed under section 502(b)(2), the court concluded that the distinction between interest-bearing and non-interest-bearing claims is "highly significant," and that "[t]o the extent that the Code in any way contemplates discounting to present value, such discounting is *not permitted* where the claim is for principal plus interest, and the interest has already been disallowed pursuant to § 502(b)(2)." *Id.* at 26.

The court determined that, "[a]s a matter of economics, the legislative history recognizes that it is irrelevant whether a court applies § 502(b)(2) to disallow unmatured interest, or discounts the *entire amount* (i.e., principal plus interest) to present value – as long as the court performs only *one* such operation and not both, the result is the same." Pet. App. 26 (footnote omitted). The majority held that "both disallowing post-petition interest and discounting the claim to present value would be impermissible . . . double discounting." *Id.* at 11. In addition, the court (including the dissenting judge) concluded that double discounting would be

inequitable. *Id.* "The point is to recognize what the creditor bargained for, while avoiding a windfall." *Id.* at 27. Emphasizing that its holding does not yield a windfall for creditors in the position of the B-2 Certificate holders here, the court explained:

> Instead, the interplay between § 502(b) and § 502(b)(2), as reflected in both the legislative history and basic economics, acknowledges that once unmatured interest has been disallowed, discounting the remainder of the claim to present value would inequitably twice penalize the creditor for the time value of money. We wholeheartedly agree that future liabilities must be reduced in some way to reflect the time value of money, but doing so twice is the "double discounting complained of by JPMorgan in this case.

Pet. App. 28.

The court rejected the "near-total" but "misplaced" reliance of US Bank and the district court upon *In re Loewen.* Pet. App. 28. The court disagreed with the *Loewen* court's "baseline conclusion" that section 502(b) is clear and unambiguous with respect to the question presented and rejected the analysis of the bankruptcy court in *Loewen, see id.*, and of the dissenting judge in this case, *id.* at 29-31 & nn.18, 19. Criticizing US Bank and the district court for asserting incorrectly that the obligations at issue in *Loewen* were interest-bearing, the court distinguished *Loewen* from the instant case on the ground that, in contrast to the contracting parties in *Loewen*, the B-2 Certificate holders here bargained for the right to receive interest payments. *Id.* at 28-29 n.17.

REASONS FOR DENYING THE PETITION

The Petition challenges the Third Circuit's holding that claims arising from interest-bearing obligations should not be discounted to present value under section 502(b) after unmatured interest has been disallowed pursuant to section 502(b)(2). The Petition provides no basis for certiorari review and should be denied.

First, the decision below does not conflict with a decision of any other court of appeals on the question presented. As the Third Circuit noted, no decision cited by US Bank holds that section 502(b) requires that the principal amount of a claim on an interest-

bearing obligation must be discounted to present value where, as here, the court has already disallowed unmatured interest on the same claim under section 502(b)(2). The decisions cited by US Bank that have allowed present-value discounting are inapposite, as they involve *non*-interest bearing obligations and do not even address the question presented here.

Second, contrary to Petitioner's contentions, the decision below is fully consistent with this Court's precedents concerning the proper interpretation of the provisions and policies of the Bankruptcy Code. A century of bankruptcy law holds that a creditor is entitled to the full principal amount of its guaranty claim against a bankrupt guarantor and no provision of the Bankruptcy Code changes that. Section 502(b) says nothing about present-value discounting and does not authorize, let alone require, the discounting of the Principal Claims. Moreover, when Congress wishes to authorize discounting, it uses language very different from that used in the text of section 502(b). Construing section 502(b)(2) to authorize present-value discounting of the principal amount of a claim on an interest-bearing obligation also would violate the canons of construction by rendering section 502(b)(2) superfluous. In addition, under the statutory predecessors to section 502(b), discounting was not authorized except for *non*-interest bearing obligations, and when Congress enacted section 502(b), it discontinued any authorization for discounting and also explained in the legislative history that discounting was not authorized. Discounting the Principal Claims also violates the Code's policy of equality of distribution. Furthermore, permitting present-value discounting of principal under section 502(b) is fundamentally unfair; imposes an unwarranted administrative burden on the bankruptcy courts; and creates a perverse incentive for guarantors to commence bankruptcy proceedings. The decision below presents no intolerable conflict with this Court's precedents.

Third, the principles articulated in the applicable precedents of this Court also demonstrate that the decision below correctly decided the question presented. Finally, the Petition presents no issue of extraordinary public importance warranting this Court's intervention. The Petition should be denied.

A. The Decision Below Does Not Conflict With A Decision Of Any Court Of Appeals On The Question Presented.

US Bank asserts that the decision below conflicts with decisions of the Sixth and Tenth Circuits that, according to US Bank, hold that section 502(b) requires that all future claims be discounted to present value. Pet. 12-13. US Bank is wrong.

US Bank must and does concede that the cases it cites in support of this contention are distinct from the instant case in that they address only *non*-interest-bearing future obligations, whereas this case concerns interest-bearing future obligations. Pet. 13. Indeed, when pressed by the Third Circuit at oral argument, US Bank could not cite a single case from *any* court that applied present-value discounting to an interest-bearing obligation after the unmatured interest had been disallowed under section 502(b)(2). Pet. App. 23-24. The Petition references no such cases. Yet US Bank boldly asserts that this is a "distinction without a difference" because there exists "no reasoned way" to distinguish between interest-bearing and non-interest-bearing claims for purposes of discounting the principal. Pet. 13. This is false and misrepresents both Respondents' arguments and the Third Circuit's holding.

The Third Circuit considered at length the distinction between interest-bearing and non-interest-bearing obligations, concluding that the difference is "highly significant." Pet. App. 23. The court correctly reasoned that, "by its terms," section 502(b)(2) applies only to claims involving interest in addition to principal, and that this is appropriate because a note providing for payments of both principal and interest is "fundamentally more valuable" than a note involving the same principal but no interest. *Id.* The court explicitly rejected US Bank's "near-total" but "misplaced" reliance upon *In re Loewen Group Int'l*, explaining that the decision is inapposite because the instruments at issue in *Loewen* were *non*-interest-bearing future obligations. Pet. App. 28-29.

The *Loewen* decision relied upon a series of cases, several of which US Bank cited below and again in the Petition. These cases also are inapposite, and for the same reason: they concern only *non*-interest-bearing future claims. For example, in *PBGC v. Belfance (In re CSC Indus., Inc.)*, 232 F.3d 505, 508 (6th Cir.

2000), the Sixth Circuit considered a claim filed by the Pension Benefit Guaranty Corporation ("PBGC") for benefit payments that PBGC would be making in the future, without interest. PBGC's claim had no interest component and, at the time the debtor filed for bankruptcy, PBGC had not yet actually suffered a loss with respect to the benefit payments that it would be making at a future date. Here, the Claims are interest-bearing and Respondents made their advances well before Oakwood filed for bankruptcy. Unlike PBGC in the *CSC* case, Respondents have already suffered losses in the form of their pre-petition principal outlays. *See also PBGC v. CF&I Fabricators of Utah, Inc. (In re CF&I Fabricators of Utah, Inc.)*, 150 F.3d 1293, 1300 (10th Cir. 1998) (future benefits to be paid by PBGC); *Pereira v. Nelson (In re Trace Int'l Holdings, Inc.)*, 284 B.R. 32, 38 (Bankr. S.D.N.Y. 2002) (debt obligation was for $500,000 in deferred compensation that was payable in 120 monthly installments without interest beginning upon retirement); *Kucin v. Devan*, 251 B.R. 269, 273 (D. Md. 2000) (future retiree benefits); *LTV Steel Co. v. Aetna Cas. & Sur. Co. (In re Chateaugay Corp.)*, No. 94 CIV. 1257 (LMM), 1996 WL 346010, *1 (S.D.N.Y. June 24, 1996) (benefit payments made after petition date); *In re O.P.M. Leasing Servs., Inc.*, 79 B.R. 161, 162 (S.D.N.Y. 1987) (debt obligation was a conditional, one-time reimbursement payment of $392,500, payable without interest).

The Third Circuit found a critical difference between such cases and the instant matter, in which Respondents had bargained for the right to receive interest. As discussed below, discounting was not authorized under the statutory predecessors to section 502(b), except for non-interest bearing obligations. When Congress enacted section 502(b), it deleted any authorization for discounting, and also explained in the legislative history that discounting was not authorized. US Bank has no response beyond the bald contention that the analysis of Respondents and the Third Circuit does not constitute a "reasoned" basis for distinguishing its cases concerning non-interest-bearing future obligations.

The "reasoning" of US Bank and the lower courts also makes no sense, as the following example demonstrates:

Suppose that a bank lends a debtor $100,000 on an unsecured basis (i.e., the bank does not take a lien on collateral to secure repayment of the loan) and that the debtor agrees to repay the principal amount of the loan in installments over time (e.g., $2,000 in principal per month for fifty months). Suppose further that the debtor agrees to pay interest on the outstanding balance of the loan each month at an annual rate of 4%. Suppose finally that the debtor files for bankruptcy the day after taking out the loan, having made no principal or interest payments on the loan. Although the bank would not be entitled to recover any post-petition interest from the debtor, it would be entitled to an allowed claim for the entire $100,000 principal amount of its loan, even though the bank agreed that the debtor could repay the loan in installments over time. The bank would be entitled to an allowed claim for $100,000 because that is what the Bankruptcy Code expressly provides. It would be absurd to suggest that the bank's claim had to be discounted to some lesser amount simply because the bank agreed that the debtor could repay the loan in installments.

Respondents are likewise entitled to an allowed claim for the full, undiscounted amount of their Principal Claims. The lack of a circuit split on the question presented is not surprising, given that the position advanced by US Bank defies logic as well as the governing provisions and policies of the Bankruptcy Code. Because there is no need for the Court to resolve a circuit split on the question presented, the Petition should be denied.

B. The Decision Below Is Fully Consistent With This Court's Precedents.

The Petition should be denied because there is no intolerable conflict between the decision below and this Court's decisions on the same issues. To the contrary, the Third Circuit's decision is entirely consistent with this Court's precedents.

1. The Court's precedents concerning plain-text analysis of Bankruptcy Code provisions mandate that the Principal Claims be allowed in full.

Assuming the truth of its own conclusions, US Bank contends that the word "shall" demonstrates that section 502(b)'s instruction that the court "shall" determine the amount of claims as of the

Petition Date "can only mean to discount claims to present value," Pet. 13, and that the Third Circuit erred by failing to apply the "plain language" of section 502(b), that "the court . . . shall determine the amount of such claim . . . as of the date of the filing of the petition," *id.* at 14. US Bank's position is unsound.

a. Under the plain text of section 101(5), the Principal Claims constitute "claims" in their full amounts.

This Court has repeatedly explained that, in construing the Bankruptcy Code, "[t]he starting point . . . is the existing statutory text." *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004). "[W]hen the statute's language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank*, 530 U.S. 1, 7 (2000). The governing provisions of the Bankruptcy Code plainly direct that Respondents hold a claim in the full principal amount advanced in exchange for the B-2 Certificates.

Section 101(5) of the Code defines "claim" to mean any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5). This definition is expansive. *FCC v. NextWave Personal Communications, Inc.*, 537 U.S. 293, 302 (2003); *Cohen v. De La Cruz*, 523 U.S. 213, 218 (1998). Similarly, "debt" is defined broadly as "liability on a claim." *Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 558 (1990) ("This definition reveals Congress' intent that the meanings of 'debt' and 'claim' be coextensive."). These definitions reflect "Congress' broad rather than restrictive view of the class of obligations that qualify as a 'claim' giving rise to a 'debt.'" *Id.* (citing H.R. Rep. No. 95-595, at 309 (1977), *reprinted in* 1978 U.S.C.C.A.N. 6266 (describing definition of "claim" as the "broadest possible" and noting that the Code "contemplates that all legal obligations of the debtor . . . will be able to be dealt with in the bankruptcy case").

Respondents clearly hold a "right to payment" against Oakwood under the Guarantees and the parties have stipulated to the amount that Oakwood owes in principal shortfalls. This right

to payment is "unsecured" because Respondents have not taken a lien on any collateral to secure Oakwood's payment obligation under its Guarantees, and is "liquidated" and "fixed" because the parties have stipulated to the amount of the principal shortfalls that Oakwood owes and Oakwood is obligated to pay these amounts. *E.g.*, *Stillwater Nat'l Bank & Trust Co. v. Kirtley (In re Solomon)*, 299 B.R. 626, 639 n.55 (10th Cir. BAP 2003) ("[T]he Debtors unconditionally guaranteed the . . . debt and there was no evidence that the Bank would forego collection or enforcement from Debtors. In short, the Debtor's liability under the guaranty was not contingent.").

Respondents' right to payment is legal in nature because it arises in contract (the Guarantees), and is "disputed" because US Bank objected, asserting that the Principal Claims must be discounted. Respondents' right to payment is "unmatured," meaning that, as of the Petition Date, the amounts that Oakwood owes were not yet due (mature) because Oakwood was to pay them in the future as shortfalls arose. *In re Moffat*, 107 B.R. 255, 261 (Bankr. C.D. Cal. 1989) (an obligation "matures" when it "becomes due," or when "no further act of any kind was necessary" in order to trigger the obligation), *aff'd*, 119 B.R. 201 (9th Cir. BAP 1990), 959 F.2d 740 (9th Cir. 1992); BLACK'S LAW DICTIONARY (8th ed., West 2004) (defining "mature" as "to become due").

Section 101(5) makes plain that a right to payment constitutes a "claim" regardless of whether it is matured or unmatured. Thus, even though, outside of bankruptcy, Oakwood would not have paid the principal shortfalls comprising the Principal Claims until they became due at different times in the future, Respondents' unmatured right to payment constitutes a "claim" equal to the full amount of the Principal Claims because section 101(5) clearly includes any unmatured right to payment as part of the claim. Nothing in section 101(5) even remotely purports to discount the amount of a right to payment on the ground that it is unmatured. Respondents thus hold a "claim" for unmatured principal in the full amount of the principal shortfalls.

b. Under the plain text of section 502(b), the Principal Claims must be allowed in full.

JPMorgan filed proofs of claim asserting Respondents' entitlement to the full amount of the Principal Claims. Pursuant to section 502(a), "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." Because US Bank objected, the bankruptcy court was required to resolve the dispute under section 502(b).

Section 502(b) provides that, if an objection to a claim is filed, "the court . . . shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that [one of the grounds for disallowance set forth in the balance of section 502(b) applies]." It is undisputed that none of the grounds for disallowance set forth in the balance of section 502(b) applies to the Principal Claims. Thus, the bankruptcy court's task under section 502(b) is simple: to determine the amount of the claim as of the Petition Date.

Section 502(b) does *not* say that the principal amount of a claim must be reduced to present value because it is unmatured (i.e., due in future installments). To the contrary, section 502(b) plainly directs the court to determine the amount of the "claim" as of the petition date, meaning that it must establish the claim based on *what* the debtor owes, not *when* the obligation is due. This is necessarily so because, by the express terms of section 101(5), unmatured rights to payments are included in the definition of "claim" and nothing in section 502(b) strips from the claim any right to unmatured principal.

As numerous courts have recognized, the allowable amount of a debt for purposes of section 502 includes any undiscounted principal installments due in the future. This is because, under the Code's broad recognition of virtually every type of claim, the principal amount of the debt that may be due in the future is effectively accelerated by the debtor's bankruptcy filing, irrespective of any acceleration language in the parties' debt instrument. *Nationwide Mut. Ins. Co. v. Optel Inc. (In re Optel Inc.)*, No. 02-2121, 60 Fed. Appx. 390, 394, 2003 WL 1511376, *4 (3d Cir. March 25, 2003); *In re Payless Cashways, Inc.*, 287 B.R.

482, 488 (Bankr. W.D. Mo. 2002); *In re Auto Int'l Refrigeration*, 275 B.R. 789, 813 (Bankr. N.D. Tex. 2002); *In re Mitchell*, 85 B.R. 564, 566 (D. Nev. 1988); *In re Manville Forest Prods. Corp.*, 43 B.R. 293, 297 (Bankr. S.D.N.Y. 1984), *rev'd, in part, on other grounds*, 60 B.R. 403 (S.D.N.Y. 1986). As one court has explained:

> It is a basic tenet of the Bankruptcy Code that "[b]ankruptcy operates as the acceleration of the principal amount of all claims against the debtor." This tenet follows logically from the expansive Code definition of claim," which allows any claim to be asserted against the debtor, regardless of whether such claim is "reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed [or] undisputed . . . ." 11 U.S.C. § 101(4)(A), and from the Code's provision in Section 502 that a claim will be allowed in bankruptcy regardless of its contingent or unmatured status. Such contingent or unmatured claims may be asserted against the debtor despite the provisions of section 362(a)(6), which stays "any act to collect, assess, or recover a claim against the debtor that arose before the filing of the Chapter 11 petition." 11 U.S.C. § 362(a)(6).

Manville, 43 B.R. at 297-98 (citations omitted) (quoted in *Optel*, No. 02-2121, 60 Fed. Appx. at 394).

In sum, under the plain terms of sections 101(5) and 502(b), Respondents are entitled to an allowed claim that includes the full, undiscounted amount of the principal shortfalls due under the Guarantees, notwithstanding that the principal amounts were unmatured on the Petition Date.

c. Section 502(b)'s plain-text instruction that the court determine the "amount" of a claim "as of the date of the filing of the petition" does not authorize discounting.

The filing of a bankruptcy petition initiates an administrative process that requires some temporal point of demarcation in order to facilitate the orderly resolution of the debtor's obligations. The petition date is the pivotal point for claims-allowance purposes.

United States v. Marxen, 307 U.S. 200, 207 (1939); *Sexton v. Dreyfus*, 219 U.S. 339, 344-45 (1911).

By instructing courts to determine the amount of a claim "as of the date of the filing of the petition," section 502(b) simply prescribes a temporal point of demarcation and sets a baseline against which other provisions of the Code operate. For example, while debtors are often obligated to pay interest to creditors on their debt instruments, the longstanding general rule in bankruptcy is that "interest on the debtors' obligations ceases to accrue at the beginning of the proceedings." *Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 163 (1946). By setting the petition date as the point from which to determine the amount of a claim, section 502(b), operating in conjunction with section 502(b)(2), gives substance to this rule: Section 502(b) sets the petition date as the baseline reference for determining the amount of the claim and section 502(b)(2) disallows the claim to the extent that "such claim is for unmatured interest." H.R. Rep. No. 595, at 3352-54 (1977), *reprinted in* 1978 U.S.C.C.A.N. at 6308 ("Interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph."); *Texas Commerce Bank, N.A. v. Licht (In re Pengo Indus., Inc.)*, 962 F.2d 543, 546 (5th Cir. 1992). Section 502(b)(2) does not itself prescribe the date from which interest is considered to be "unmatured" (and therefore not allowable) because section 502(b) sets the relevant baseline.

As a practical matter, unless section 502(b) prescribed the petition date as the point of demarcation, it would be unclear whether the amount of a claim should be determined from that date or from some other date. Moreover, section 502(b) directs the court to set the *amount* of a claim as of the petition date, not the claim's *value*. Section 502(b) says nothing at all about valuing a claim, discounting a claim, or anything remotely similar. Section 502(b) should not be read to authorize more than what it actually prescribes. The bankruptcy court erred in construing section 502(b) as a broader claims-adjustment mechanism than it actually is. *See Felix Frankfurter, Some Reflections on the Reading of*

Statutes, 47 Colum. L. Rev. 527, 536 (1947) ("One must also listen attentively to what [the statute] does not say.").

2. The Court's precedents concerning contextual analysis of Bankruptcy Code provisions mandate that the Principal Claims be allowed in full.

Congress adopted the original Bankruptcy Code in 1978 after ten years of study. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240 (1989). The Code was intended to function as a coherent regulatory scheme. Recognizing this, the Court has directed that the Code's provisions should be construed together, taking into account the relationships among the provisions and Congress's choice of language in drafting them. *Timbers*, 484 U.S. at 369-71 ("Statutory construction is a holistic endeavor."); *Kelly v. Robinson*, 479 U.S. 36, 43 (1986) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law") (citations and internal quotation marks omitted); *Duparquet Huot & Moneuse Co. v. Evans*, 297 U.S. 216, 218 (1936).

a. When Congress intends discounting under the Code, it uses language distinctly different from the text of section 502(b), and Congress did not intend section 502(b) to authorize discounting.

When Congress intends that an amount be discounted to present value, it says so expressly, directing the court to determine the "value" of the amount as of a particular point in time. For example, Congress has provided in section 1325(a)(5)(B)(ii) that, in considering the sufficiency of future distributions a debtor proposes to make to a secured creditor under a chapter 13 plan, the court must determine "the *value*, as of the effective date of the plan, of [the] property to be distributed under the plan." (emphasis supplied). This text requires the court to "discount to present value" the stream of future payments proposed under the debtor's plan to ensure that it has a value that equals or exceeds the current value of the secured creditor's claim. *Till v. SCS Credit Corp.*, 541 U.S. 465, 468 (2004) (plurality); *Assoc. Commercial Corp. v. Rash*, 520 U.S. 953, 962 (1997); *Rake v. Wade*, 508 U.S. 464, 472

n.8 (1993); H.R. Rep. No. 95-595 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6364.

In *Till*, this Court further explained that "the Bankruptcy Code includes numerous provisions that, like [section 1325(a)(5)(B)(ii)], require a court to 'discoun[t] . . . [a] stream of deferred payments back to the[ir] present dollar value.'" 541 U.S. at 474 & n.10 (quoting *Rake*, 508 U.S. at 472 n.8 and listing provisions). Conspicuously absent from this list is section 502(b). This is not surprising. In each of these enumerated provisions, Congress has expressly directed the court to determine the "value" of some amount as of a particular date and, as noted, the term "value" as used in these provisions means "present value." *Till*, 541 U.S. at 469 n.4. In contrast, section 502(b) says nothing about determining the "value" of a claim but merely directs the court to "determine the *amount* of [the creditor's] claim . . . as of the date of the filing of the petition." (emphasis supplied); *see* 11 U.S.C. § 1129(a)(9)(A) ("amount"), § 1129(a)(9)(B)(ii) ("amount"). This choice of language is dispositive.

When Congress employs particular language in a provision of the Bankruptcy Code, it is presumed to act deliberately, and Congress's use of different terms in different provisions also is presumed to be deliberate. *NextWave*, 537 U.S. at 302; *Davenport*, 495 U.S. at 560-61; *Bates v. United States*, 522 U.S. 23, 29-30 (1997). As discussed, Congress has directed in section 101(5) that a "claim" includes any and all unmatured installments of principal. If Congress had intended courts to reduce the unmatured principal amount of a claim by discounting the unmatured portion to present value, it would have directed the court to do so by determining the "value" of the claim. Conversely, that Congress did not do so means that it did not intend courts to discount claims. *E.g.*, *NextWave*, 537 U.S. at 302; *Toibb v. Radloff*, 501 U.S. 157, 162 (1991); *Davenport*, 495 U.S. at 560-61

b. The bankruptcy court's discounting rule renders section 502(b)(2) superfluous.

Engrafting a discounting requirement onto section 502(b) would violate a well-established canon of statutory construction by rendering superfluous another section of the very same provision.

Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 112 (1991). As noted, section 502(b)(2) requires that a claim must be disallowed "to the extent that . . . such claim is for unmatured interest." *Vanston*, 329 U.S. at 163. The bankruptcy court disallowed the postpetition (unmatured) interest component of the Claims. But if section 502(b) itself required discounting, it would already eliminate a claim for postpetition (unmatured) interest because the very process of discounting to present value reduces a claim by an imputed rate of interest necessary to reflect the present value of payments due in the future. *St. Louis Southwestern R. Co. v. Dickerson*, 470 U.S. 409, 412 (1985) ("it is self-evident that a given sum of money in hand is worth more than the like sum of money payable in the future" and "the method of calculating present value should take into account . . . the rate of interest"). As one commentator has explained:

> The concept of present value is really quite simple and can be easily illustrated. Assume that A wants to borrow money from B, repayable at a future date. B is willing to make the loan, but feels that, considering the risks involved, he is entitled to a 10 percent annual rate of return. This being the case, how much money will he advance to A on A's note for $10 payable one year hence? The answer is $9.09, because the $10 paid next year provides interest of $.91, which is 10 percent of a $9.09 loan. Thus, $9.09 is the present value of $10 payable one year hence at a discount rate of 10 percent.

Sumner N. Levine, *Financial Analysts' Handbook I*, 140 (1975); *see Rake*, 508 U.S. at 472 n.8; 3 *The New Palgrave Dictionary of Money & Finance*, 172 (Peter Newman et al. eds., 1992) (present value means "the summed discounted value of the stream of revenues which [an] asset generates" as to which "[t]he discount factor will be that determined by the interest rate over the relevant period").

By definition, then, the process of discounting a right to payment to present value eliminates any interest recovery because interest is the measure of the difference between the value of the future amount to be paid and the present value of the same amount.

Accordingly, if section 502(b) directs present-value discounting of unmatured payment obligations, section 502(b)(2) is unnecessary. This Court has instructed that "an interpretation of a congressional enactment which renders superfluous another portion of that same law" should be rejected. *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998) (internal quotation marks and citation omitted).

3. The decision below is consistent with this Court's precedents proscribing judicial re-drafting of statutes and defining the power of bankruptcy courts.

Courts lack "carte blanche to redraft statutes in an effort to achieve what Congress is perceived to have failed to do." *United States v. Locke*, 471 U.S. 84, 95 (1985). Moreover, although bankruptcy courts are courts of equity, "[w]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). This Court has restricted the ability of federal courts to establish categorically novel methods of treating claims under the Bankruptcy Code. *United States v. Reorganized CF&I Fabricators of Utah, Inc.*, 518 U.S. 213, 228-29 (1996); *United States v. Noland*, 517 U.S. 535, 540 (1996). The bankruptcy court lacked the authority to engraft a discounting feature onto section 502(b). It is for Congress, not the courts, to specify such a procedure. Because Congress has not done so in section 502(b), the bankruptcy court erred in ruling that the Principal Claims must be discounted.

4. The decision below is consistent with this Court's precedents concerning the fundamental bankruptcy policy of equality of distribution.

This Court has long recognized the ancient policy underlying the Bankruptcy Code of equality of distribution among similarly situated creditors. *E.g.*, *Union Bank v. Wolas*, 502 U.S. 151, 161 (1991); *Young v. Higbee*, 324 U.S. 204, 210 (1945). The bankruptcy court's discounting rule would ensure that Respondents would receive far less than similarly situated claimants.

The process of allowing and paying claims in bankruptcy is designed to achieve finality, and one reason why the filing of a bankruptcy case operates as an automatic acceleration of all the

debtor's outstanding indebtedness is to facilitate this process and enable all claims to be treated together and paid at a single point in time. To accomplish this, all of the debtor's liabilities are tallied and distributions are made ratably on allowed claims according to the availability of funds and each claim's relative payment priority. *Vanston*, 329 U.S. at 161.

Obviously, a debtor may have many different kinds of debt obligations. For example, the debtor may be liable to a tort victim for an undetermined amount of damages; to a bank for an unmatured loan obligation; and to a tax collector for taxes payable in the future. In determining the amount of the tort creditor's claim, the court would not discount to present value the principal amount of the claim simply because it may take a year or more to determine the amount of the damages through the completion of a judicial procedure. Where the damages have already been incurred, the amount of the damages forms the basis of the tort creditor's claim, regardless of the fact that the damages might not be paid until some point in the future. Likewise, the bank would be entitled to assert a claim for the full principal balance of its loan and the tax collector would be entitled to assert a claim for the full amount of any taxes. Calculating claims in this way, without discounting based on when the claim might mature, fulfills both the command of section 502(b) and the policy of equality of distribution because it ensures that amounts owed as of the petition date will be treated the same, regardless of when payment on a particular claim might be due.

The bankruptcy court reduced the Principal Claims to an amount far less than the principal amount of Respondents' losses, with the result that Respondents would face a distinct disadvantage as compared to other creditors who will receive distributions from Oakwood's bankruptcy estate based on the full, undiscounted principal balance of their claims. This result is obviously unequal and violates the policy of equality of distribution.

5. The decision below comports with this Court's precedents concerning the need to avoid administrative burdens and to promote efficiency in bankruptcy.

A principal reason why bankruptcy law cuts off claims for unmatured interest after the debtor files for bankruptcy is to *avoid* the administrative burden of calculating and recalculating claims based on the accrual of interest after the petition date. *Vanston*, 329 U.S. at 164. The bankruptcy court's discounting rule is particularly anomalous because it requires the imposition of an even more complex administrative burden.

In order to discount the Principal Claims, the bankruptcy court had to determine an appropriate discount rate. Obviously, the Guarantees do not define contractually how to discount the *principal* amount of the Claims because this is not an ordinary commercial concept. Accordingly, the bankruptcy court was required to consider conflicting expert testimony on how this might be accomplished. The court's consideration of such conflicting expert testimony, however, is precisely the sort of administrative burden that bankruptcy law seeks to avoid. Indeed, bankruptcy law is particularly sensitive to such burdens, given the inherent lack of resources present in most bankruptcy cases and the fact that Congress intended bankruptcy administration to be expeditious and inexpensive. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 517 n.1 (1984). Had Congress intended courts to engage in an expensive and complex discounting inquiry, it would have authorized it. That Congress has not done so demonstrates that it is unwarranted.

6. The decision below comports with this Court's precedents proscribing windfalls in bankruptcy.

A longstanding policy of bankruptcy law is to prevent a party from receiving "a windfall merely by reason of the happenstance of bankruptcy." *Butner v. United States*, 440 U.S. 48, 55 (1979). The bankruptcy court's discounting rule would generate a windfall for other creditors precisely because it inequitably strips away the vast majority of the Principal Claims, with the result that Respondents would receive recoveries based on claim amounts that reflect a small fraction of their actual losses, while other creditors

would enjoy recoveries based on the full, undiscounted amount of their principal claims. Nothing in the Bankruptcy Code sanctions this and the Third Circuit properly rejected the rule as inequitable.

C. The Third Circuit Correctly Decided The Question Presented.

The Petition should be denied because the decision below correctly decided the question presented, as demonstrated by the foregoing discussion and by the following additional points.

1. The decision below is supported by prior practice under the predecessors to section 502.

"[W]hen Congress amends the bankruptcy laws, it does not write on a clean slate." *Dewsnup v. Timm*, 502 U.S. 410, 419 (1992) (internal quotation marks and citation omitted). The Court has also stated: "We . . . 'will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure.'" *Cohen*, 523 U.S. at 221 (quoting *Davenport*, 495 U.S. at 563); *see CF&I*, 518 U.S. at 221; *Duparquet*, 297 U.S. at 218. Conversely, when Congress adopts a provision of the Code that eliminates an authorization under prior law, it is presumed to have acted deliberately. *Lamie*, 540 U.S. at 538.

The immediate statutory predecessor to section 502(b) was section 63 of the Bankruptcy Act of 1898, 11 U.S.C. § 103 (repealed 1979), which provided in relevant part:

> Debts of the bankrupt may be proved and allowed against his estate which are founded upon (1) a fixed liability . . . absolutely owing at the time of the filing of the petition by or against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest . . . .

Like section 502, section 63 set the petition date as the baseline reference for claims-allowance purposes. Section 63 made plain that a creditor was entitled to the principal amount of its claim "whether then payable or not"; was entitled to interest accrued "at the time of the filing"; and the *only* exception to

allowance of the full principal amount of the debt was for *non*-interest-bearing obligations, as to which the section prescribed "a rebate of interest upon such as were not then payable *and did not bear interest*." (emphasis supplied). *See* 3A COLLIER ON BANKRUPTCY, ¶ 63.16 at 1856-57 (14th ed. 1972) ("[Section 63] computes interest as of the day of the filing of the petition and stops it at that date, and this computation has been carried so far as to require a rebate of interest, presumably at the legal rate, on *non-interest-bearing debts* that have not matured when bankruptcy intervenes, for the reason that bankruptcy serves to accelerate the due date.") (emphasis supplied). The predecessor to section 63, section 19 of the Act of 1867 also limited discounting to non-interest-bearing obligations. *See* Act of 1867, ch. 176, 14 Stat. 517 (1867) (repealed 1878); *In re Orne*, 18 F. Cas. 10,581 (S.D.N.Y. 1867) (recognizing that section 19 required discounting for non-interest-bearing obligations, not interest-bearing debts).

When Congress enacted section 502(b), it did not alter the prior practice of refusing to discount the principal amount of an unmatured interest-bearing obligation. To the contrary, Congress eliminated the only form of discounting that sections 63 and 19 permitted by refusing to reauthorize the discounting of unmatured non-interest-bearing debts. That Congress retained the substance of sections 63 and 19 in so far as they establish the petition date as the baseline for claims-allowance purposes, but *eliminated* all reference to "rebates of interest" on unmatured *non*-interest bearing obligations, demonstrates that Congress intended to eliminate what it did not retain. *Lamie*, 540 U.S. at 538.

2. The decision below is supported by the legislative history to section 502(b).

The conclusion that Congress intended to end any practice of discounting the principal amount of an unmatured obligation is confirmed by the legislative history to section 502(b). As explained in the House Report:

> Section 502(b) thus contains two principles of present law. First, interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph. Second, bankruptcy

> operates as the acceleration of the principal amount of all claims against the debtor. One unarticulated reason for this is that the discounting factor for claims after the commencement of the case is equivalent to the contractual interest rate on that claim. *Thus, this paragraph does not cause disallowance of claims that have not been discounted to a present value because of the irrebuttable presumption that the discounting rate and the contractual interest rate (even a zero interest rate) are equivalent.*

H.R. Rep. No. 595, at 3352-54 (1977), *reprinted in* 1978 U.S.C.C.A.N. at 6308 (emphasis supplied); *see* S. Rep. No. 989, at 62-5 (1978), *reprinted in* 1978 U.S.C.C.A.N. at 5848 (same). The foregoing demonstrates that Congress (a) intended the automatic acceleration of the principal amount of all claims upon the petition date; and (b) did not intend that the principal amount of a claim be discounted.

3. The decision below is mandated by settled bankruptcy law concerning guaranty claims.

For well over a century, every federal court to have addressed the issue has adhered to a uniform rule: a creditor holding a guaranty claim is entitled to assert the full amount of the claim against the bankrupt guarantor at the time the guarantor commences its bankruptcy case. Further, the creditor may assert the full amount of the claim without regard to any payments the creditor receives or may receive from any other party also liable for the debt guaranteed by the guarantor. *E.g.*, *Ivanhoe Bldg. & Loan Ass'n v. Orr*, 295 U.S. 243, 245 (1935); *Security Nat'l Bank v. Gessin (In re Gessin)*, 668 F.2d 1105, 1107 (9th Cir. 1982); *Ireton v. Lincoln Nat'l Bank*, 300 F. 316, 317-18 (6th Cir. 1924); *In re Realty Assocs. Sec. Corp.*, 66 F. Supp. 416, 424 (E.D.N.Y. 1946), *aff'd in part, mod. in part*, 163 F.2d 387 (1947); *In re F.W.D.C., Inc.*, 158 B.R. 523, 528 (Bankr. S.D. Fla. 1993).

The bankruptcy court's conclusion that the Principal Claims had to be discounted to reflect that Oakwood was obligated to pay principal shortfalls in the future was rejected by each of these cases. Regardless of whether the guarantor may be obligated outside of bankruptcy to make payments in the future, or whether

others may satisfy the underlying debt in part at some future date, the creditor is entitled to assert the *full* amount of the guaranteed obligation against the guarantor at the time the guarantor files for bankruptcy, and the bankruptcy court must allow the full amount. The concept is one of automatic acceleration.

D. The Petition Presents No Issue Of Extraordinary Public Importance Warranting This Court's Intervention.

The Petition fails to demonstrate the existence of an issue of extraordinary public importance. In truth, the only interest at stake here is US Bank's interest in increasing the amount of its share of the proceeds of Oakwood's bankruptcy estate, at the expense of Respondents. For this reason too, this Court's intervention is unwarranted and the Petition should be denied. *E.g.*, *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393 (1923) ("importance" as a consideration in determining whether certiorari is warranted relates to the importance of the issues "to the public as distinguished from" importance to the particular parties involved).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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(3)

No. 06-517

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In The Supreme Court of the United States

U.S. BANK NATIONAL ASSOCIATION,
as Indenture Trustee,

Petitioner,

v.

JPMORGAN CHASE BANK, as Trustee;
JEFFERSON-PILOT LIFE INSURANCE COMPANY;
JEFFERSON-PILOT FINANCIAL INSURANCE
COMPANY; TYNDALL PARTNERS, LP; and
TYNDALL INSTITUTIONAL PARTNERS, LP,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

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REPLY

In our petition, we showed that this case directly raises the question whether federal courts may selectively apply the discounting command in § 502(b) of the bankruptcy code, 11 U.S.C. § 502(b). We also showed that this case is an ideal vehicle for considering and deciding the question presented, because it arises on stipulated facts (Pet., at 4),[1] and the outcome of the case turns on the issue. Pet., at 4-6, 8. Respondents' brief in opposition does not contest any of this.

Nor, remarkably, does respondents' brief in opposition defend the Third Circuit's holding that § 502(b) may be selectively applied. Even as the headings declare that the Third Circuit's decision is correct, the body of the brief abandons the court's interpretation in favor of a different one—that § 502(b) unambiguously forbids discounting any future principal obligations to present value. This is a position that the Third Circuit expressly rejected. App., at 22 ("We do not hold here that 11 U.S.C. § 502(b) *never* authorizes discounting a claim to present value.") But it is one that respondents now unquestionably adopt: "Congress . . . did not intend that the principal amount of a claim be discounted." Br. Opp., at 29. *See also id.*, at 22 (Congress "did not intend courts to discount claims"); *id.*, at 24 ("The bankruptcy court lacked the authority to engraft a discounting feature onto section 502(b)"); *id.*, at 28 ("When Congress enacted section 502(b), it . . . eliminated the only form of discounting that [prior statutes]

[1] The brief in opposition describes a larger amount of claims as being at issue than the petition does. While the case was on appeal, some of the claims were settled. The smaller amounts in the petition accurately describe the claims that remain at issue in this Court.

permitted by refusing to reauthorize the discounting of unmatured non-interest-bearing debts.").

Respondents' position establishes two things that are relevant to this Court's decision to grant review:

First, respondents' abandonment of the Third Circuit's decision in favor of an interpretation that no court has ever adopted shows just how indefensible the decision below is. The Third Circuit maintained that § 502(b)'s command to "determine the amount of" allowable claims "as of the date of the filing of the" bankruptcy petition sometimes does and sometimes does not require discounting. But surely it does not mean both. Even respondents agree that § 502(b) either requires discounting to present value or it does not. There is no textual grant of discretion, only a question of interpretation. Pet., at 14. Section 502(b) cannot be read sometimes one way and sometimes another. Pet., at 19-20.

Second, and more important, respondents' own position defeats their attempt to explain away the clear split in the circuits on the question presented. Before the decision below, courts had consistently held that § 502(b) unambiguously requires all claims for future obligations to be discounted to present value to place them on equal footing with claims for presently due obligations. Pet., at 11-12 (citing decisions from the Sixth and Tenth Circuits and other lower courts). The Third Circuit created a split with these decisions when it considered and rejected their interpretation. App., at 24 n. 13, 28. To minimize the split, respondents would have to show there is a meaningful difference—for purposes of interpreting and applying § 502(b)—between claims for principal only (the facts of the earlier cases) and claims for both principal and

interest (the facts of this case). But respondents' argument on the merits shows that they do not believe there is a meaningful difference any more than petitioner does. Like petitioner, respondents believe that all future claims must be treated the same under the plain text of § 502(b). Either discount them or not, with no discretion to pick and choose. Br. Opp., at 22, 24, 28, 29 (quoted above).

The conflict between respondents' attempt to distinguish away the circuit split and their argument on the merits is most stark where, in a single paragraph, respondents first cite the alleged distinction between interest-bearing and non-interest-bearing claims and then reject it:

> The Third Circuit found a critical difference between such cases [that did not involve claims for interest] and the instant matter, in which Respondents had bargained for the right to receive interest. As discussed below, discounting was not authorized under the statutory predecessors to section 502(b), except for non-interest bearing obligations. When Congress enacted section 502(b), it deleted *any authorization for discounting*, and also explained in legislative history that discounting was not authorized.

Br. Opp., at 14 (emphasis added).

Ultimately, what this Court unanimously held in *Pennsylvania Dept. of Corrections* v. *Yeskey* is equally true in this case: "[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." 524 U.S. 206, 212 (1998) (citations and quotation marks omitted). That is true not only of § 502(b), which unambiguously requires all claims for future obligations to be

discounted, but also of the decisions of the circuit courts adopting that interpretation. On the simple interpretive question of whether claims for future obligations must be discounted, the Sixth and Tenth Circuits hold "always," the Third Circuit holds "sometimes," and respondents argue "never." A clear split exists that this Court should resolve.

Nor does the clutter of respondents' arguments on the merits diminish the clarity of the question presented or the quality of this case as a vehicle. This is not the time to address respondents' merits arguments in full. Suffice to say that respondents repeatedly cite unexceptional bankruptcy decisions for propositions for which they do not stand. They cite cases holding that a bankruptcy filing accelerates all debts for purposes of *filing* a claim for the proposition that all such claims are *allowed*. Br. Opp., at 18-19. That is confusing two separate things, as we explained in our petition. Pet., at 3-4. Respondents similarly cite cases holding that a bankruptcy filing accelerates all amounts guaranteed by a debtor for purposes of *filing* a claim for the proposition that all such claims are also *allowed*. Br. Opp., at 29-30. Neither of these arguments (or the others like them) stand up under any scrutiny. More importantly, whatever their merit, they provide no barrier to granting review in this case.

And the Court should grant review. The case directly presents the question whether courts may selectively apply § 502(b) to discount some claims for future obligations but not others. The circuits are divided on this issue. And the issue, because it implicates the power to allow and disallow claims that is "an essential part of the bankruptcy process" (4 *Collier on Bankruptcy* ¶ 502.01

(15th ed. 2006)), is of "basic importance in the administration of" bankruptcy law. *Gardner* v. *New Jersey*, 329 U.S. 565, 573 (1947).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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